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UNSTA



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LEGAL ENGLISH FOR LAW STUDENTS

INGLÉS JURÍDICO PARA ESTUDIANTES DE LEYES
EDICIÓN CORREGIDA Y AUMENTADA

**Inglés jurídico
para estudiantes universitarios**

*Legal English
for university Students*

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Pablo Jesús García

3ª edición
Corregida y aumentada



**Universidad del Norte Santo Tomás de Aquino
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Palabras Introductorias

Esta tercera edición está destinada a los alumnos de las carreras de Abogacía y Notariado de la Facultad de Ciencias Jurídicas, Políticas y Sociales de la Universidad del Norte Santo Tomás de Aquino y a cualquier interesado que desee embarcarse en el aprendizaje y práctica de la lecto comprensión de textos jurídicos en inglés.

En esta obra los textos de la tercera edición fueron revisados y corregidos, otros cambiados. Así también, se agregó de manera separada, una sección con una síntesis acerca de las estructuras gramaticales básicas del inglés con sus equivalentes al español. Esto ayuda bastante a los alumnos a abordar la lecto comprensión de los textos seleccionados.

Del mismo modo, se incluyó una sección con guías de estudio sobre distintos aspectos teóricos del Derecho Consuetudinario Anglosajón y algunas comparaciones y contrastes con las tradiciones jurídicas de los EEUU de Norteamérica y del Derecho Continental. Por otro lado, atendiendo a las características del perfil de nuestros alumnos, se añadieron actividades de lectura que propician el uso de la tecnología móvil y recursos web.

Las modificaciones realizadas procuran ofrecer un material más organizado y fácil de usar por parte de nuestros lectores, tanto los alumnos que cursan el espacio curricular en las carreras mencionadas anteriormente como cualquier otro lector interesado en el tema.

Ramón A. Rios
Prof. Titular

Pablo J. García
Prof. Adjunto

Estrategias efectivas de lectura

La estructura de los textos

Cuando uno lee, uno busca cierto tipo de comunicación dentro de determinada **estructura**. Ya que los escritores optan por organizar su material de una manera particular, debemos ser capaces de ver o discernir esa estructura dentro de los textos que leamos.

En los textos encontraremos:

1. **Ideas** que se desarrollan desde el nivel **oración** hasta llegar al nivel del **texto** como un todo (oración, párrafo y texto)
2. Debemos tener siempre presente que se tiende a desarrollar ideas o conceptos **desde unidades mínimas hasta llegar a un todo**.
3. Recordemos que se puede desarrollar un argumento por medio de la **amplificación**, es decir, cada vez que una proposición se expresa, luego será **expandida**.
4. Un argumento se puede expandir o desarrollar mediante la **analogía** (el argumento se desarrolla al compararla con una situación similar) o cuando el autor usa la **ilustración** para desarrollar su argumento, es decir, da ejemplos del mismo.
5. Tener siempre presente que un argumento puede ser **inductivo** o **deductivo**. Un argumento inductivo es aquel que **comienza con datos específicos** y los usa para expresar su conclusión, mientras que aquellos que son deductivos, el autor sugiere una proposición general y lo justifica. Reconoceremos argumentaciones deductivas o inductivas en las oraciones / párrafos iniciales del argumento.

Si uno conoce y entiende cual es el tipo de estructura que presenta el texto, ese conocimiento nos ayudará a saber **cómo leerlo**. Dos elementos importantes de la estructura que debemos encontrar son:

- El desarrollo de ideas en oraciones y en párrafos.
- El desarrollo de argumentos.

Como leemos los textos

- a) *Examinar rápidamente el texto*, hacer una lectura ligera del mismo para encontrar la idea principal del mismo (SKIM READING).

- I. Cuando queremos buscar algo específico.
- II. Cuando pretendemos solo recuperar la idea general del texto
- III. Cuando, tras haber leído el texto con detenimiento, necesitamos reforzar cierta información.

Si se reúnen una o varias de las razones planteadas en el apartado anterior, sería útil usar una de las siguientes estrategias de lectura:

- Leer tanto el encabezado como así también la conclusión del primer párrafo,
- Leer tanto el comienzo como la conclusión de los siguientes párrafos para obtener una idea generalizada del texto como un todo,
- Buscar palabras o frases que actúan como indicadores de las ideas principales o mensajes dentro del texto,
- Marcar el texto con un resaltador cualquier elemento o idea sobre la cual se quiera volver con posterioridad.

b) *Lectura específica del texto*, dicha estrategia es usada en conjunción con la estrategia antes expuesta. Es útil si uno busca información específica incluida en diferentes obras de referencia. El proceso implica búsqueda y descubrimiento, así mismo, involucra leer el texto ligeramente, localizar, marcar y retomar la lectura de una parte específica.

c) *Lectura en profundidad*, (SCAN) la habilidad fundamental que uno desarrolla al aprender a leer. Este procedimiento implica leer el texto detenidamente para comprender las ideas y los argumentos contenidos en el texto. En consecuencia, esta estrategia es mucho más lenta que las antes descritas y usualmente se la emplea al leer textos que ofrecen cierta dificultad. Lo que hacemos es lo siguiente:

- I. Leer el comienzo del primer párrafo y sus conclusiones primero. Con esto lograremos dilucidar la intención del autor a priori de la lectura detallada.
- II. Volver al principio del texto, releerlo y marcar / resaltar lo siguiente lo siguiente:
 - Palabras o frases claves,
 - Ideas, hechos o datos que consideremos importantes,
 - La estructura del argumento.
- III. Asegurarse que entendemos la idea principal y la argumentación del autor, como así también el mensaje general que presenta el texto.

d) *Lectura crítica*. Este tipo de lectura es suplementaria a la anterior. Se trata de no aceptar lo expuesto por el texto en su sentido literal. Se trata de cuestionar y poner en tela de juicio el valor de la información contenida en el texto. Existen una serie de procesos interrelacionados en la lectura crítica: *interpretación, análisis, síntesis y evaluación*.

- ✓ *Interpretación*: es cuando leemos para descubrir el significado en un texto, es decir, deducir a que conclusiones podemos llegar a partir de los postulados del texto.
- ✓ *Análisis*: se da cuando examinamos la manera en la que las ideas y mensajes se relacionan para crear el sentido general del texto. Al analizar un texto dirigimos nuestra atención a:

- Identificar suposiciones (los valores ocultos que sirven de basamento para lo que expone el autor)
- La estructura del argumento (relación entre ideas – ¿es deductivo o inductivo?)
- La relación que existe entre la evidencia / datos y el argumento que sustentan
 - ✓ *Síntesis*: Se da en conjunción con la operación de análisis. Se trata de aunar los resultados del análisis para conjeturar una conclusión en la cual basar la interpretación o la evaluación.
 - ✓ *Evaluación*: por medio de este proceso establecemos el valor de un texto. Es una operación compleja que involucra las antes mencionadas (interpretación, análisis, síntesis). Al evaluar un texto, observamos las ideas desde un contexto mayor.

¿Cómo evaluamos un texto?

1. Usamos la interpretación para descubrir el significado del texto,
2. Usamos el análisis para determinar si la argumentación es consistente y si es lógica o no.
3. Le damos un valor al argumento. (usamos nuestro propio conocimiento o podemos utilizar material de referencia)

Textos y situaciones

Cada texto puede y debería ser leído en determinadas situaciones. Es la situación misma la que guiará la forma de aproximarse al texto y demandará de una manera explícita la forma de leer un texto. Existen distintas formas de aproximarse a un texto según la situación y la profesión. Por ejemplo, en una situación de estudio lo más probable sería que Ud. lea un texto de un manual o libro de derecho y la tarea o accionar que demandaría esta situación será comprender, interpretar, analizar, etc.

Por otro lado, si es un científico en un laboratorio, leyendo un artículo de una publicación científica, la tarea que demandaría dicha situación y texto será interpretar, analizar, y/o evaluar.

Recuerde siempre que la situación o contexto es la que nos informará sobre qué tipo de texto estamos leyendo y sobre las actividades a realizar con el texto y sobre que deberíamos buscar en el texto.

Mejorar las estrategias de lectura

Si Ud. se enfrenta a un texto difícil o complejo, o si Ud. no lee con eficiencia bajo circunstancias normales, puede mejorar la forma de lectura teniendo un propósito en mente en su metodología.

Siempre piense en el proceso de lectura como de tres etapas:

1. Planificación de la lectura
2. Lectura propiamente dicha
3. Reflexión sobre la lectura

1. **Planificar la lectura:** esto lo ayudará a tener bien claro su foco u objetivo. Esto se consigue en muy poco tiempo y se puede realizar contestando unas simples preguntas: a) ¿Qué deseo obtener a partir de esta lectura?, b) ¿Qué ideas, si algunas, necesito llevar yo al texto?, c) ¿Por qué ha sido este texto particularmente seleccionado (por mí o por otros)?, d) ¿Puedo subdividirlo al texto en secciones para leerlo? y e) ¿La lectura superficial, que me dice a cerca del texto?

2. **Lectura propiamente dicha:** una vez que Ud. tenga su foco u objetivo claro para la lectura particular de un texto, cómo en realidad leerá el texto, dependerá de la naturaleza del mismo. No existe un método único para este tipo de actividad pero si hay varios principios que lo pueden guiar:

- Identificar el punto de partida del argumento o idea principal del autor. Usualmente esto se lleva a cabo observando el 1er y 2do párrafo de todo texto.
- Observe si Ud. puede detectar cualquier creencia o posicionamiento del escritor en el texto,
- Identifique ideas importantes o centrales en los párrafos mientras lee el texto (si hay varias, trate de detectar cuáles son las más importantes)
- Determine si las ideas están conectadas o desarrolladas.
- Examine la consistencia de los argumentos desarrollados por el autor.
- Evalúe la evidencia que ha sido presentada para defender las ideas o principios establecidos en el texto y evalúe si la evidencia es relevante, persuasiva y convincente o no.
- Evalúe si las conclusiones se justifican en base a las evidencias que han sido presentadas en el texto.

Después de haber leído cuidadosamente todo el texto, como se sugiere arriba, haga algunas notas con respecto a:

- Su comprensión del texto;
- Su respuesta o reacción preliminar a las ideas y controversias/argumentos que han sido presentados en el texto.

3. **Reflexión:** piense a cerca de lo que ha leído por unos minutos y considere lo siguiente:

- ¿Tiene cuestiones no respondidas o no claras acerca del significado del texto? Si es así, regrese al texto para realizar una lectura superficial o relea secciones específicas del texto.
- ¿Existen algunas creencias o ideas que Ud. no haya reconocido en el texto?
- ¿Está seguro que entiende cómo se relacionan las distintas secciones del texto?
- ¿Es capaz de realizar conexiones entre el texto y otro material que haya leído?
- ¿Considera que sus conclusiones son parciales o imparciales? ¿Son limitadas / ilimitadas?

Si se le solicitó que responda preguntas específicas a cerca del texto...

- ¿Entiende que tipo de respuesta se esperan de las preguntas sobre el texto? Si no es así, relea las preguntas. Si Ud. cree que entiende el texto, considere si las preguntas necesitan ser interpretadas.
- ¿Necesita hacer referencias de / citar ideas en las respuestas a sus preguntas? Si es así, realice notas sobre otro material que usted desee usar.

<http://www.educationcaribbean.com/irevise/study/read01.asp>

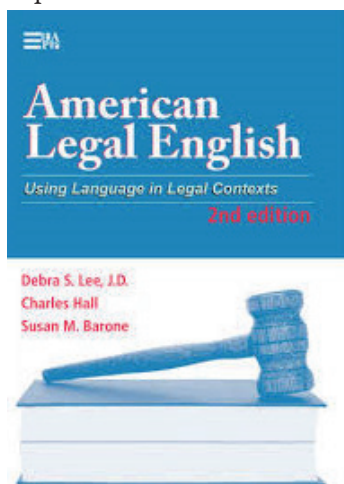
Capítulo I

Introducción Al Lenguaje Jurídico Inglés

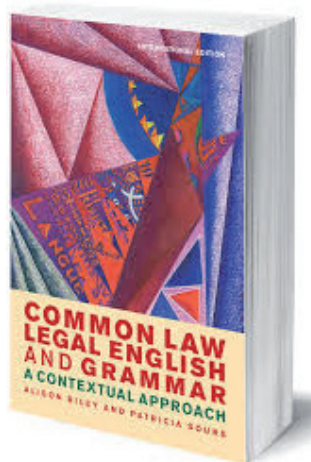
Introduction To Legal English Language

TAREA 1: Observe las imágenes a continuación y diga de qué se tratan cada uno de los libros.

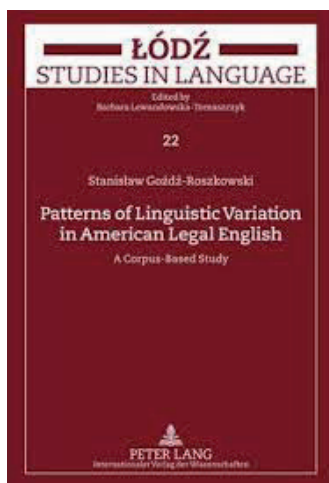
Tapa 1



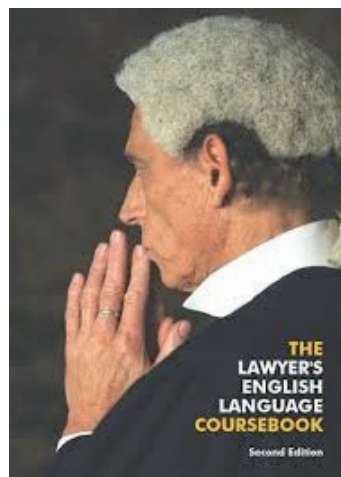
Tapa 2



Tapa 3



Tapa 4



Observe y analice los títulos de los libros, diga que palabras similares al español encuentra y exprese su significado en español.

1.
2.
3.
4.

Texto 1: Definiciones sobre *Law*

Lea con la vista las definiciones a continuación, luego exprese en español que se entiende por “*Law*” según cada una de las secciones a continuación. Discuta con sus pares e instructor las definiciones y posibles diferencias que encuentre entre las mismas.

Definition of law - Definition of law for English Language Learners
: the whole system or set of rules made by the government of a town, state, country, etc.
: a particular kind of law
: a rule made by the government of a town, state, country, etc.

Definition of law for Students
1 : a rule of conduct or action that a nation or a group of people agrees to follow
2 : a whole collection of established rules the law of the land
3 : a rule or principle that always works the same way under the same conditions the law of gravity
4 : a bill passed by a legislature
5 : police
6 : the profession of a lawyer

Medical Dictionary - law
Medical Definition of law : a statement of order or relation holding for certain phenomena that so far as is known is invariable under the given conditions

Law Dictionary

Legal Definition of law

1 : a rule of conduct or action prescribed or formally recognized as binding or enforced by a controlling authority: as a : a command or provision enacted by a legislature — see also statute 1 b : something (as a judicial decision) authoritatively accorded binding or controlling effect in the administration of justice that case is no longer the law of this circuit

2a : a body of laws the law of a state; broadly : laws and justice considered as a general and established entity the law looks with disfavor on restraints on alienation b : common law — compare equity 2

3a : the control or authority of the law maintain law and order b : one or more agents or agencies involved in enforcing laws c : the application of a law or laws as distinct from considerations of fact an error of law — see also issue of law at issue, matter of law at matter, question of law at question 2

4 : the whole body of laws and doctrines relating to one subject contract law the law of attractive nuisance

5a : the legal profession practice law b : the nature, use, and effects of laws and legal systems as an area of knowledge or society the politics of law — compare jurisprudence

at law: under or within the provisions of the law especially as opposed to equity a remedy at law

law - Synonyms - act, bill, constitution, enactment, ordinance, statute

Retrieved 15/08/17: <https://www.merriam-webster.com/dictionary/law>

TEXTO 2: Lea el siguiente texto y observe los grupos o frases nominales subrayadas, tradúzcalas y analice sus componentes.

The most powerful person in court is the judge. Most courts have only one judge, but some higher courts have several. In the US Supreme Court, the nine judges are called justices, and the most senior is the Chief Justice of the United States. Many State judges are elected, but federal judges are appointed by the President.

http://preview.oup.co.uk/elt/culture_cd/links/links.html

TEXTO 3: Lea el siguiente texto y analice las formas verbales del verbo “to be”. Luego, relea el texto y subraye las palabras que cumplen función de conectores lógicos y referentes.

...the people on either side of a case **are** the parties to the case and they **are** represented by lawyers, also called attorneys-at-law. In a criminal trial the defendant (= the person accused) **is** represented by a defense attorney. If he or she **is** too poor to pay a lawyer, the court appoints a public defender. The prosecution **is** led by an Assistant District Attorney or, in a federal case, a federal attorney. In a civil trial, the defendant and the plaintiff pay their own attorneys. When only a small amount of money **is** involved people go to a court of common pleas and represent themselves.

http://preview.oup.co.uk/elt/culture_cd/links/links.html

TEXTO 4: Congress

a- Observe las frases subrayadas, analícelas con su instructor. Diga en español que función cumplen en el texto y expréselas en español.

Congress consists of two houses, the Senate (to which each state elects two senators for a period of six years) and the House of Representatives, in which the number of representatives from each state depends on its population. Bills cannot become law until they are passed by both houses, and if they are not passed by a two-thirds majority they can be vetoed by the President. Bills must not conflict with the constitution.

The Federal government is responsible only for problems of national importance, such as trade and defence. The government of the individual states are responsible for all other matters.

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The Federal government is responsible only for problems of national importance, such as trade and defence. The government of the individual states are responsible for all other matters.

b- Lea el texto y diga si las ideas (1 – 4) son falsas o verdaderas:

1. Congress has three Houses.
2. Each State elects six Senators for a period of two years.
3. Bills can be against the constitution.

4. Each State is responsible for national issues.

c- Expresar el equivalente en español de las siguientes frases

1. Consists of:
2. Depends on:
3. Cannot become:
4. Are passed
5. Are not passed:
6. Can be vetoed:
7. Must not conflict with:

TEXTO 5: Miscellaneous.

Lea los siguientes textos y aplique todo lo aprendido hasta el momento, reconociendo las siguientes estructuras:

- Frases Nominales y Verbales.
- Formas del verbo “ser o estar” y “haber”.
- Pronombres y conectores.
- Plurales de sustantivos.
- *Modal verbs* y *wh-words*.

Each type of court has its own jurisdiction, i.e. it deals with certain kinds of cases. Some courts hear only criminal cases. Other courts are for civil cases, in which two people disagree over something. Cases are first heard in trial courts. The person accused in a criminal trial, and both sides involved in a civil trial, have the right to appeal against the court’s decision, and if they do the case goes to a court of appeals.

Some trial courts have limited jurisdiction. Many states, for example, have family courts where people get divorced, and small claims courts which hear cases involving small sums of money. States have trial courts of general jurisdiction which can hear a wider range of cases.

These are often called courts of common pleas. State courts of appeals are called superior courts or district courts, and most states have a supreme court. This is the highest court in the state and hears only the most serious appeals.

States have their own criminal code, but some crimes are federal offences, i.e. against federal law. Crimes may fall under federal jurisdiction if more than one state is involved, e.g. if cars are stolen in one state and then sold in another.

There are many Americans who believe that their legal system is fair. The idea of innocent until proven guilty is especially important. Americans also want their legal system to be open. Members of the public can go into the courts, and real trials are shown on television. However, many African Americans think that the system is only fair and open for white Americans. This is a growing problem and it seems likely remain as long as there is prejudice against African Americans in other areas of life.

http://preview.oup.co.uk/elt/culture_cd/links/links.htm

TEXTO 6: Observe el cuadro a continuación y realice una comparación con la profesión legal en Argentina. Use la columna vacía para completar con datos en español.

THE LEGAL PROFESSION

	ARGENTINA	EEUU	REINO UNIDO
Requisitos		Título de grado - Licenciatura	Sin requisitos - Título de grado.
Institución donde se estudia		Law Schools	Law Faculty
Duración		4 años (grado) 3 años (postgrado) Práctica profesional	4 años (grado) 2 a 3 años de Práctica profesional
Título que se obtiene		Postgrado: JD / LLM o ML	Título de grado: LB / JD
Exámenes		<ul style="list-style-type: none"> • Law School Admission Test • Bar Exam (state exam) 	<ul style="list-style-type: none"> • Test to the Law Society
Ramas en que se divide la profesión		----	Barrister / Solicitors
Asociaciones / Colegios		The Bar	The Law Society (solicitors) The Bar Council (Barristers)

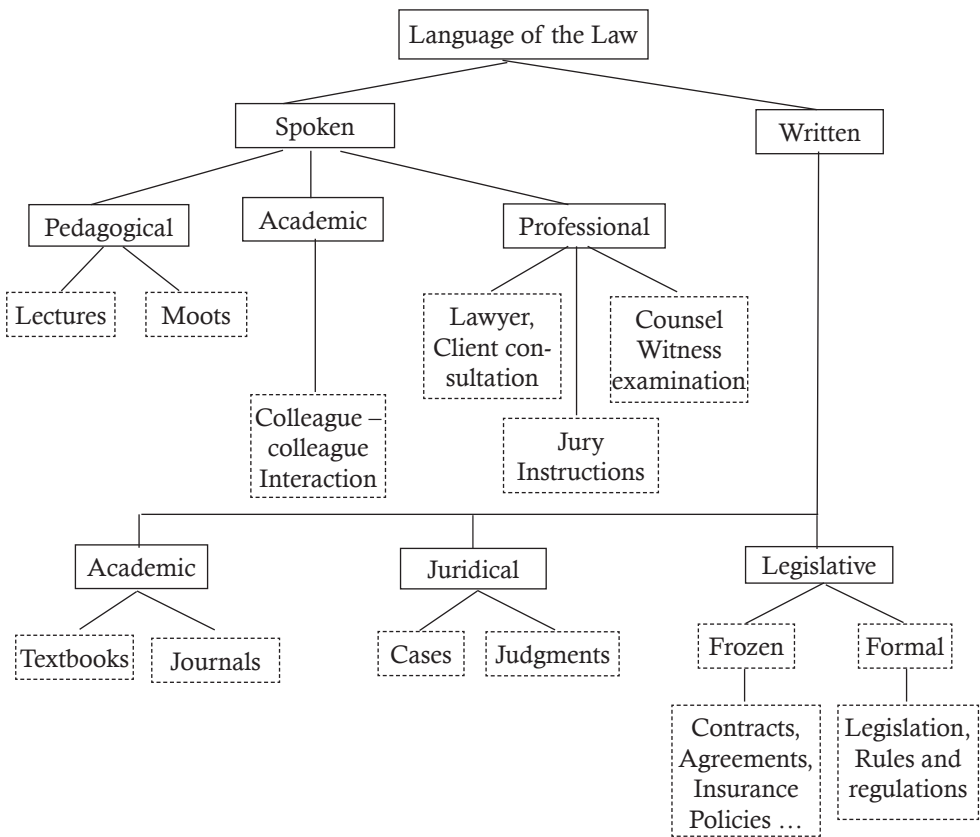
¿Que se mide en exámenes?

- Capacidad de lectura y comprensión
- Expresión escrita coherente y ordenada

- Manejar y procesar información
- Síntesis y análisis
- Razonamiento lógico
- Argumentación crítica
- Conocimiento de código deontológico

TEXTO 7: Language of the Law

Observe el diagrama siguiente y escriba un párrafo describiendo y explicando el contenido del mismo. En su opinión, ¿qué aspectos / áreas estudiaremos en este curso?



Capítulo II

Orígenes y fuentes del Derecho Inglés

Origins and sources of English Law

TEXTO 1: What is Law?

Lea los siguientes párrafos y realice las tareas a continuación.

- i. Law is any system of regulations to govern the conduct of the people of a community, society or nation in response to the need for regularity, consistency and justice based upon collective human experience.
- ii. We can define law as all the rules of conduct that the government approves and which are in force over a certain territory and which must be obeyed by all persons from that territory. If any person breaks these rules, the government may take some actions such as imprisonment or fine, or private actions such as a legal judgement against the offender obtained by the person injured by the action prohibited by law.
- iii. Law can be defined as the body of legislative pronouncements of rules to guide one's actions in society.
- iv. Law is a generic term for the body of regulations for conduct, including specialized rules, moral conduct under various religions and for organizations usually called "bylaws".

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a. Diga si las ideas son falsas o verdaderas, Si son falsas, corríjalas.

1. Law can be defined as a set of rules to check upon people's behaviour.
2. Laws are based on a person's experience.
3. The term "bylaw" is a synonym for the concept of law.
4. Foreigners and local residents have to abide by the rules and regulations suggested by government.
5. Violations of this set of laws may lead to government actions against the law-breaker.

b. Expanda las siguientes ideas en español.

- 1. Law is any system.....
- 2. If a person breaks these rules.....
- 3. We can define.....
- 4. Law is a generic.....

TEXTO 2: Law

Lea el texto prestando atención a las palabras y frases subrayadas. Luego, discuta el significado de las mismas con su instructor. Finalmente, realice un resumen de los dos primeros párrafos.

The word “law” evokes fear for some, comfort to others and, too often, dangerous disagreement. Law touches and controls every aspect of our lives, yet only a few judges, lawyers, and law professors know anything at all about the mysteries of its language or the source of the fundamental precepts on which all “legitimate law” is established.

In this troubled world agreement is what we need most, for in agreement we can find the force of unity required to stand against the threats of those who do not understand us. To prevail in this global battle of ideas, we need a clearer understanding of the language of our law, for it is this “legal language” and its principles that unite us as freedom-loving people resolved to stand as one, a nation dedicated to preserve those principles for all!

Learn the language of law and discover the self-evident truths upon which we can all agree. Communicate this agreement with others, standing together on the principles that prepare us to prevail in the battle for peace. Threat of war vanishes where people find agreement through effective communication. Misunderstanding is the fuel of controversy and violence.

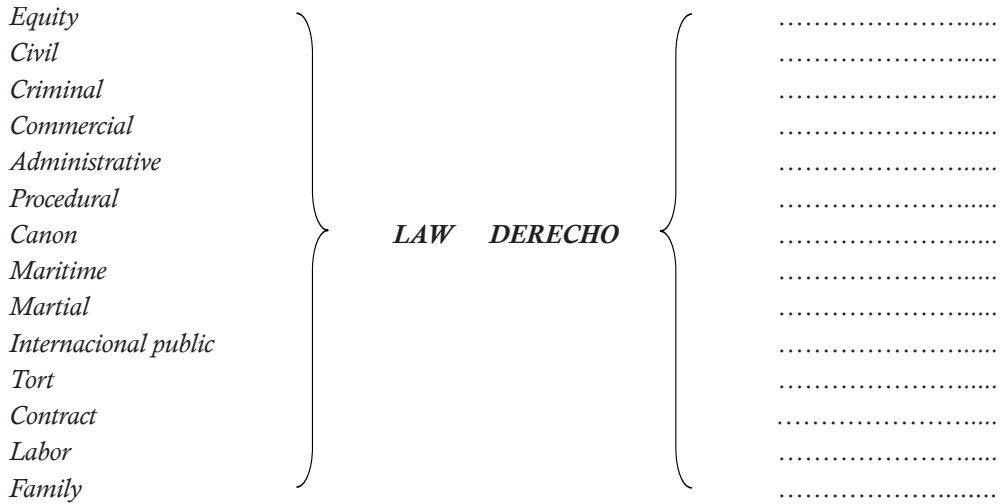
In the language of our legal system you’ll find self-evident truths beyond debate, principles so clearly favorable to peace and prosperity that all reasonable persons must agree.

Where are recent changes in our legal language taking us today? What can we do together to make the journey safer? How can we promote agreement and prevent the perilous quarrels it arouses?

<http://www.jurisdictionary.com/SidePages/Language.htm>

TEXTO 3: Branches of Law – Ramas del derecho

- **Branches of law.** Busque en el diccionario el equivalente para cada una de estas ramas del Derecho.



- Observe los siguientes compuestos con el vocablo “**Law**” y busque las acepciones en un diccionario. Analice las frases nominales dadas.

LAW-GIVER:

LAW-MAKER:

LAW-MAKING:

LAW-MAKING POWER:

LAW-ABIDING:

LAW-BREAKER:

LAW-COURT:

LAW-ENFORCEMENT:

LAWSUIT:

TEXTO 4: Common Law

Lea el texto y realice el ejercicio a continuación.

Law that exists and applies to a group on the bases of historical legal precedents developed over hundreds of years. Because it is not written by elected politicians but, rather, by judges; it is also referred to as “unwritten law”. Common law also applies in the US and is based on judicial precedents (courts’ decisions) rather than legislative enactments. Judges seek these principles out when trying a case and apply the precedents to the facts to come up with a judgment. We can always contrast “common law” with “civil law” systems which require all laws to be written in a code or written collection. Common law is referred to as “the common sense of the community, crystallized and formulated by our ancestors”. *Equity* develops after the common law to offset medieval judges’ rigid interpretations of common law.

Babylon Translator Pro. (1.997-2.001). Version 3.2.32. Babylon Ltd.

Responda las preguntas en español.

1. How can “common law” be defined?
2. What is the difference between judicial precedents and legislative enactments?
3. What do you understand by “*unwritten*” law?
4. Why and when do judges look for principles?
5. What distinction is there between common and civil law?
6. Why does Equity develop?

Elementos referenciales que dan cohesión a un texto en inglés y español

A modo de resumen, según Lozano, Peña-Marín y Abril¹ existen factores que conforman la coherencia en un nivel superficial (algunos autores llaman cohesión). Entre estos elementos encontramos conjunciones, artículos, pronombres etc. Algunos autores denominan al artículo “deixis **anafórica**” textual. Es decir, es un índice **previo /anterior** al sustantivo que sirve, entre otras funciones, para situarlo textualmente y favorecer la coherencia. Cuando la referencia textual esta **después** del sustantivo u otro elemento referido en el texto, la denominamos referencia **catafórica**.

¹ Lozano, Peña-Marín y Abril *Análisis del discurso. Hacia una semiótica de la interacción textual*. Cátedra. Madrid: 1989. pp. 22 – 23.

Lea el texto a continuación prestando atención a las palabras y frases subrayadas. Observe las referencias.

“...**Some elements of Saxon practice** linger, including *trial by ordeal* (by burning the hand, for example), which is retained until 1215. *Outlawry*, a Saxon procedure whereby a fugitive is placed outside the protection of the law, is retained for centuries to deal with people **who** flee from justice. Gradually, however, new procedures take the place of these crude devices. ...”

a- “*Some elements of Saxon practice...*” hace referencia a:

.....

b- “*Who*” hace referencia a:

¿Cuál de ellos hace referencia “catafórica” y cuál de ellos hace referencia “anafórica”?

a-

b-

Lea atentamente el texto a continuación y especifique cuál es la referencia de las palabras o frases subrayadas.

“...Law that exists and applies to a group on the bases of historical legal precedents developed over hundreds of years. Because **it** is not written by elected politicians but, rather, by judges; **it** is also referred to as “unwritten law”. Common law also applies in the US and is based on judicial precedents (courts’ decisions) rather than legislative enactments. Judges seek **these principles** out when trying a case and apply the precedents to the facts to come up with a judgment. **We** can always contrast “common law” with “civil law” systems which require all laws...”

TEXTO 5: The historical rise of Common Law (Part 1)

Lea el texto y realice las tareas que le siguen.

English common law appears in the early Middle Ages in the decisions of local courts, **which** apply what Blackstone called “the custom of the realm from time immemorial” and practical reason to everyday disputes with the aid of but few formal enactments. Until the late 19th century, English common law continues to be developed primarily by judges rather than legislators. The common law of England is in fact largely a Norman

creation. The Anglo-Saxons, especially after the accession of Alfred the Great (871), develop a body of rules resembling those being used by the Teutonic peoples of northern Europe. Local customs govern most matters, while the church plays a large part in government.

The concept of crimes originates in this era, but **they** are treated as wrongs for **which** compensation is made to the victim. The Norman Conquest of 1066 brings a practical end to the Saxon laws, except for some local customs. All of the land is allocated to Norman feudal vassals of the king. Serious wrongs are regarded mainly as public crimes rather than as personal matters, and the perpetrators are punished by death and forfeitures of property. Government is centralized, a bureaucracy built up, and written records maintained. Royal officials roam the country, inquiring into the administration of justice. Church and state are separate and have **their** own law and court systems. **This** leads to centuries of rivalry over jurisdiction, especially since appeals from church courts, before the Reformation, can be taken to Rome. **Some elements of Saxon practice** linger, including *trial by ordeal* (by burning the hand, for example), which is retained until 1215. *Outlawry*, a Saxon procedure whereby a fugitive is placed outside the protection of the law, is retained for centuries to deal with people **who** flee from justice. Gradually, however, new procedures take the place of these crude devices.

The Normans speak French and had developed a customary law in Normandy. **They** have no professional lawyers or judges; instead, they use “clerks,” or literate clergymen, to act as administrators. Some of the clergy are familiar with Roman law and the canon law of the Christian Church. Canon law is adopted by the English church, but the Normans resist any attempt to introduce Roman law, **which** is applied only to certain claims under wills in the church courts, to marine disputes in the admiralty courts from the 14th century, and to military law. Norman custom is not simply transplanted to England, and new bodies of rules, based on local conditions, grow up.

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a. Diga a que hacen referencia las palabras y frases a continuación.

1. Which (line 2):
2. They (line 9):
3. Which (line 9):
4. Their (line 16):
5. This (line 16):
6. Some elements of Saxon practice (lines 17 & 18):
7. Who (line 20):
8. They (line 22):
9. Which (line 26):

TAREA DIGITAL 1

Tras haber leído y trabajado el **texto 5** *The historical rise of Common Law (Part 1)* esquematice su contenido diagramando **una línea de tiempo** utilizando herramientas web.

Posibles herramientas a usar:

<https://www.timetoast.com/>



<https://www.tiki-toki.com/>



http://www.readwritethink.org/files/resources/interactives/timeline_2/



TEXTO 6: The historical rise of Common Law (Part 2)

Lea el texto a continuación y realice las tareas que se detallan a continuación del mismo.

“...Of extraordinary influence in the development of common law and in **its** dissemination to other parts of the world is the most famous of English jurists, Sir William Blackstone. Born in 1723, he enters the bar in 1746 and in 1758 becomes **the first person** to lecture on English law at an English university. His most **influential work**, *the Commentaries on the Laws of England*, is published between 1765 and 1769 and consists of four books: “Persons” deal with family and public law; “Things” give a brilliant outline of real-property law; “Private Wrongs” covers civil liability, courts, and procedure; and “Public Wrongs” is an excellent study of criminal law. Blackstone is far from being a scientific jurist and is criticized for **his** superficiality and lack of historical sense. The shortcomings of the Commentaries in these respects, however, are offset by **its** style and intelligibility, and lawyers and laymen alike come to regard it as an authoritative exposition of the law. In the following century the fame of Blackstone is even greater in the United States than in his native land. After the Declaration of Independence the Commentaries became **the chief source of knowledge** of English law in the New World._

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a. Especifique a qué hacen referencia de las palabras y/o frases subrayadas.

b. ¿De qué manera Blackstone contribuye al desarrollo del Derecho Inglés?

c. Complete la siguiente tabla.

NOUN	ADJECTIVE	ADVERB	VERB
influence			
	authoritative		
			develop
liability			
		historically	

TAREA DIGITAL 2



Situación: Como parte del cursado de un posgrado en Inglés Jurídico, se les solicita realizar una exposición sobre el jurista inglés **Sir William Blackstone** para compañeros de dicho posgrado.

Tras haber leído y trabajado el **texto 6: *The historical rise of Common Law (Part 2)*** visite la siguiente **imagen interactiva** y complemente la información obtenida del texto antes mencionado.

<https://www.thinglink.com/scene/1091367233600356353>

Actividades en vistas a organizar y preparar la exposición:

- A) Lea la introducción de la biografía, vea el breve video y visite la descripción de su obra. Use todas las fuentes de información para completar **el diagrama** propuesto en la imagen.
- B) Haga la presentación de la exposición sobre el famoso jurista en clase, valiéndose del diagrama trabajado.

TEXTO 7: The development of common law in the United States

Lea el texto a continuación y realice las tareas que se detallan a continuación del mismo.

The first English settlers on the Atlantic Seaboard of North America bring with them only elementary notions of law. Colonial charters confer on them the traditional legal privileges of Englishmen, such as habeas corpus and the right to trial before a jury of one's peers, but there are few judges, lawyers, or law books, and English court decisions slowly reach them. Each colony passes its own statutes, and governors or legislative bodies act as courts. Civil and criminal cases are tried in the same courts, and lay juries enjoy wide powers.

English laws passed after the date of settlement does not automatically apply in the colonies, and even pre settlement legislation is liable to adaptation. English cases are not binding precedents. Several of the American colonies introduce substantial legal codes, such as those of Massachusetts in 1648 and of Pennsylvania in 1682. By the late 17th century, lawyers are practicing in the colonies, using English law books and following English procedures and forms of action. In 1701 Rhode Island legislate to receive English law in full, subject to local legislation, and the same happens in the Carolinas in 1712 and 1715. Other colonies, in practice, also apply the common law with local variations. Many legal battles in the period leading up to the War of Independence are fought on common-law principles, and half of the signatories of the Declaration of Independence are lawyers.

The U.S. Constitution itself uses traditional English legal terms. After 1776 anti-British feeling leads some Americans to advocate a fresh legal system, but European laws are diverse and unavailable in textbook form. Blackstone's Commentaries, reprinted in America in 1771, is widely used, even though new English statutes and decisions are officially ignored. In the 1830s two great judges, James Kent of New York and Joseph Story of Massachusetts, produce important commentaries on common law and equity, emphasizing the need for legal certainty and for security of title to property. These works follow the common-law tradition, which has never been fundamentally altered in the United States, except in Louisiana, where French civil law survives.

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a-Extraiga las ideas principales de cada párrafo, en español.

b-Realice un resumen del texto en español.

TEXTO 8: Comparisons of English, American, and Commonwealth law

Lea el texto a continuación y realice las tareas que se detallan a continuación del mismo.

a-Complete el cuadro a continuación:

Characteristics	English Common Law	American Common Law
Public Law		
Form of Government		

The legal systems rooted in the English common law diverge from their parent system so greatly over time that in many areas the legal approaches of common-law countries differ as much among themselves as they do with the civil-law countries. Indeed, England and the United States have so many legal differences that they are sometimes described as “two countries separated by a common law.”

The most striking differences are found in the area of public law: England has no written constitution and no judicial review, whereas every court in the United States possesses the power to pass judgment on the conformity of legislation and on other official actions to constitutional norms. Throughout the 20th century, many areas of U.S. law have been “constitutionalized” by the increasing exercise of judicial power. Other factors that account for much of the distinctiveness of public law in the United States are its complex federal system and its presidential, as distinct from parliamentary, form of government. In the area of private law, however, family resemblances among the common-law systems are much greater. Yet even there, despite broad basic similarities, the common-law countries have developed distinctive variations over time.

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b-Expresé en español las ideas contenidas en el 2º (segundo) párrafo.

Capítulo III

Derecho Constitucional

Constitutional Law

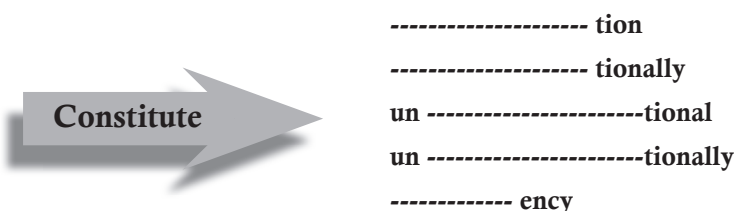
CONSTITUTION - Constitución

Busque en un diccionario jurídico (inglés - español / español - inglés) el significado de la palabra “*constitution*”

.....

.....

¿Qué otras palabras pueden derivarse de la palabra “*constitute*”? Observe el uso de los prefijos y sufijos usados para derivar palabras.



¿Qué diferencias puede establecer entre las siguientes frases: “*written constitution*” y “*unwritten constitution*”?

.....

.....

TEXTO 1: Constitutional Law (Part 1)

In England the body of law, customary, statutory and judicial, which determines the relationship of all the organs of government to each other and to the subject of the Crown and residents aliens. It is a characteristic of English Constitutional Law, because of the practically unrestricted power of Parliament at the present time (technically the King in Parliament), that any change or amendment of Constitutional Law can be made by a simple

Act of Parliament. The term “unconstitutional” is applied by Blackstone to the attempt Of James to govern by proclamation or personal order.

From: Radin, Max *Radin Law Dictionary*. New York, Oceana Publications, 1955.

a. Responda las preguntas siguientes:

1. What is Constitutional Law according to the English system?
2. What do you understand by “Unconstitutional” as used in the text?
3. Does Parliament have the power to amend / change the constitution?

b. Falso o verdadero

1. James II’s attempt to govern by himself is a precedent in English Constitutional Law.
.....
2. An Act of Parliament, the King and an individual person could act outside the field of constitutional norm.

TEXTO 2: Constitutional Law (Part 2).

Lea el texto a continuación y realice las tareas que se detallan a continuación del mismo.

In the United States, Constitutional Law is the body of Law created by applying and interpreting the constitution of the United States together with its successive Amendments. Any act of public authority, executive, legislative or judicial, which violates the Constitution or irreconcilable with it, is unconstitutional or void. The term is most commonly used in connection with statutes duly passed by the Congress or the legislatures of the several states. Only the court may pass authoritatively on the question of **constitutionality**. Although it is frequently stated that an unconstitutional law is void and no law at all, the courts have attempted, in a few instances, to protect persons who have changed their position relying on an unconstitutional statute.

Constitutional Law includes certain customs and usages, which are not provided for by the Constitution which have been found by the courts not to be in violation of it. In general, however, any power exercised the any person claiming public authority must be specifically or by implication warranted by a Constitutional provision.

The constitutional Law of most Latin American and European countries which like the USA, have a written constitution, is of the same character as the constitutional Law of the United States. In some countries there is power, conceded or granted, to suspend the Constitution in emergencies, a power not existing in the USA.

From: Radin, Max *Radin Law Dictionary*. New York, Oceana Publications, 1955.

a. Responder.

1. What is Constitutional Law according to the American System?
2. When can we consider an act “unconstitutional or void”?
3. Is it common for the Court to consider an “unconstitutional act”, constitutional?

b. Traduzca el texto.

COLLOCATIONS - Colocaciones

Observe las colocaciones a continuación y explique el significado de las mismas.

“unconstitutional act”- “void act” - “statute duly passed”- “warranted by a constitutional provision”

“... power, conceded or granted...” - “to suspend a Constitution” - “to violate a Constitution”

TEXTO 3: Constitutional Law (Part 3).

Constitutional Law is the study of the United States constitution and its broad framework. Specifics include the powers of each branch of government, judicial review of Congressional enactments, separation of powers, the relationship between the federal government and the states, the limitations of the federal government’s interference with private transactions, and the concept of state action which underpins all the limitations on governmental power in the Constitution. Constitutional law also explores individual rights under each of the Amendments.

The major issues in constitutional law include equal protection, due process, freedom of speech, freedom of religion, and the right to bear arms.

The Constitution has seven articles. Article I establishes the House of Representatives and the Senate. Article II of the Constitution establishes the presidency and the executive branch of government. Article III establishes the Supreme Court and the rest of the federal judicial branch. Article IV is the full faith and credit clause, establishing that all states must recognize the laws of other states. Article V of the Constitution provides the procedures to be followed to amend the Constitution. Article VI lays out the legal status of the Constitution, and Article VII establishes the ratification procedures.

The United States Constitution also has 27 Amendments, including the Bill of Rights, which are the first 10 Amendments.

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a. Extraiga los ejemplos de palabras que contienen PREFIJOS y SIFIJOS del texto y analícelas.

b. Elabore un resumen del texto en no mas de 60 – 70 palabras.

TEXTO 4: Constitution, a definition.

The body of doctrines and practices that form the **fundamental organizing principle** of a political state. In some cases, such as the United States, the **constitution** is a specific written document; in others, such as the United Kingdom, it is a collection of documents, statutes, and **traditional practices** that are generally accepted as **governing political matters**. States that have a written constitution may also have a body of **traditional or customary practices** that may or may not be considered to be of **constitutional standing**. Virtually every state claims to have a constitution, but not every **government** conducts itself in a **consistently constitutional manner**. The general idea of a constitution and of **constitutionalism** originates with the ancient Greeks and especially in the **systematic, theoretical, normative, and descriptive writings** of Aristotle. In his *Politics*, *Nicomachean Ethics*, *Constitution of Athens*, and other works, Aristotle used the Greek word for constitution (*politeia*) in several different senses. The simplest and most neutral of these is “the **arrangement** of the offices in a polis” (state). In this **purely descriptive** sense of the word, every state has a constitution, no matter how **badly or erratically** governed it may be. This article deals with the theories and **classical conceptions** of constitutions as well as the features and practice of constitutional government throughout the world.

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a. Traduzca y analice las oraciones encuadradas y sus respectivas frases verbales subrayadas.

b. Observe los sufijos en negrita y clasifíquelos en:

1. Those used to create adverbs,
2. Those used to derive adjectives,
3. Those used to create nouns.

c. Explique el significado de las siguientes palabras en la jerga jurídica.

1. “stand”
2. “standing”

d. Expresé el significado de lo siguiente.

*“fundamental organizing principles”- “governing political matters” - “constitutional standings”
“systematic, theoretical, normative and descriptive writings”*

TEXTO 5: The nature of constitutional law.

Lea el texto y analice las frases verbales subrayadas.

In the broadest sense, a constitution is a body of rules governing the affairs of an organized group. A parliament, a church congregation, a social club, or a trade union could operate under the terms of a formal written document labelled constitution. **This** does not mean that all of the rules of the organization are in the constitution, for usually there are many other rules such as bylaws and customs. Invariably, by definition, the rules spelled out in the constitution are considered to be basic, in the sense that, until **they** are modified according to an appropriate procedure, all other rules must conform to **them**. Thus, the presiding officer of a club is obliged to rule that a proposal is out of order if **it** is contrary to a provision of its constitution. Implicit in the concept of a constitution is that of a higher law that takes precedence. Every political community, and thus every national state, has a constitution, at least in the sense that **it** can operate its important institutions according to some fundamental body of rules. In this sense of the term the only conceivable alternative to a constitution is a condition of anarchy.

Constitutions may be written or unwritten; they may be complex or simple; they may provide for vastly different patterns of governance. Even if the only rule that matters is the whim of an absolute dictator, **that** might be said to be the constitution._

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a. ¿A qué hacen referencia las palabras a continuación?

1. This (line 3):
2. They (line 6):
3. Them (line 7):
4. It (line 8):
5. It (line 11):
6. That (line 16):

b. “Constitutions may be written or unwritten”, ¿qué entiende por esta idea?

c. Relea el texto y subraye los casos de voz pasiva. Luego tradúzcalas al español.

TEXTO 6: The Constitution of the USA, its preamble.

Lea el Preámbulo de la Constitución de los EE.UU.

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the com-

mon defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

<http://www.law.cornell.edu/constitution/constitution.preamble.html>

Analice su contenido y compárelo con el de Argentina. ¿En qué sentido son distintos y similares?

TEXTO 7: a) Amendments.

b) The Bill of Rights.

A) In government and law, an addition or alteration made to a constitution, statute, or legislative bill or resolution. Amendments can be made to existing constitutions and statutes and are also commonly made to bills in the course of their passage through a legislature. Since amendments to a national constitution can fundamentally change a country's political system or governing institutions, such amendments are usually submitted to an exactly prescribed procedure. The best-known amendments are those made to the U.S. Constitution; Article V makes provision for the amendment of that document. The first 10 amendments made to the Constitution are called *the Bill of Rights*. A total of 27 amendments have been made to the Constitution. For an amendment to be made, two-thirds of the members of each house of Congress must approve it, and three-fourths of the states must ratify it. Congress decides whether the ratification will be by state legislatures or by popularly elected conventions in the several states. In many U.S. states, proposed amendments to a state constitution must be approved by the voters in a popular referendum. _

<http://www.legal-database.com/amendments.htm>

a. Selecciones la opción más apropiada.

1. Amendments can be made a) only to constitutions / b) to several documents / c) both.
2. Amendments a) change the political system dramatically / b) don't change the political system at all.
3. The a) 10 / b) 27 first amendments make up what is called "the Bill of Rights"
4. For an amendment to come into existence, a) more than half / b) half / c) less than half of each houses of Congress must approve it.

B) Constitutional Amendments – The Bill of Rights.

First Amendment: Establishes Right to Freedom of Speech and Religion.

Second Amendment: Establishes the Right to Bear Arms.

Third Amendment: States that owners have no duty to house soldiers during peacetime.

Fourth Amendment: Establishes a Person's Rights to be Free from Search and Seizure and Arrest without Probable Cause.

Fifth Amendment: Establishes the Rights to Due Process, Against Self Incrimination, and Against Double Jeopardy.

Sixth Amendment: Establishes the Right to Counsel and to a Speedy and Fair Trial.

Seventh Amendment: Establishes the Right to a Trial by Jury.

Eighth Amendment: Establishes the Rights against Cruel and Unusual Punishment.

Ninth Amendment: States that Rights not outlined in the Constitution, i.e. Unremunerated Rights - are left to the People.

Tenth Amendment: States that the powers not delegated in the Constitution are left to the States.

b. Elabore un cuadro sinóptico en base a la información detallada en las Enmiendas.

Tarea Digital 1

En esta actividad, podrán analizar en grupos cómo en diferentes situaciones se violaron o incumplieron algunas de las enmiendas descritas en *The Bill of Rights*.

Entre a la siguiente **pizarra digital** donde encontrará casos/contextos a analizar. Luego, en grupos, realicen las tareas de lectura siguiendo los links correspondientes:

<https://padlet.com/pablooldaq1/enmiendas>

Turno Mañana

Grupo 1	https://docs.google.com/document/d/18QUZ2GtLf-jskWpBZ21112VgxQDeyr-mw8t0n9UioIJM/edit?usp=sharing
Grupo 2	https://docs.google.com/document/d/1hOBtpYg7JPNfS1_gijxf-7-FFI14MYBn_KZiBXxe-Fc/edit?usp=sharing
Grupo 3	https://docs.google.com/document/d/1WsNtQ4-iuSHa80yYmg7W-DOAXw9VzzjUQzE7Mkz0HxYw/edit?usp=sharing
Grupo 4	https://docs.google.com/document/d/1rZtqf5Izc2Uhsb9L-5p9P4Ta8Wld9v-09PerOD-5Sijk/edit?usp=sharing
Grupo 5	https://docs.google.com/document/d/1ks9GY8k01ZUquZ0rh_iinqIzQTJUXn-6LOtD2Hc426b0/edit?usp=sharing



G1M



G2M



G3M



G4M



G5M

Turno Tarde

Grupo 1	https://docs.google.com/document/d/1zhO0Mowu91YWDieVh3oNFKkBAy7tVkXh47NBpjPD4uw/edit?usp=sharing
Grupo 2	https://docs.google.com/document/d/1Eqn-bW3A7hH_rT1FoQe56126c2n-w8J2It7aNbqCpiFU/edit?usp=sharing
Grupo 3	https://docs.google.com/document/d/1cNBAu59Z9bng6AnfZv7cjcHrjFaB7yt2tIiE7cAt5og/edit?usp=sharing
Grupo 4	https://docs.google.com/document/d/1rZtqf5Izc2Uhsb9L-5p9P4Ta8Wld9v-09PerOD-5Sijk/edit?usp=sharing
Grupo 5	https://docs.google.com/document/d/1J881c1OWqyau_6-6CAhHIOVHLb-0ChStuFdWglFuRKQE/edit?usp=sharing



G1T



G2T



G3T



G4T



G5T

Capítulo IV
Derecho Penal Inglés
English Criminal Law

TEXTO 1: Criminal Law – a definition.

Lea el texto a continuación y realice las tareas que se detallan a continuación del mismo.

Criminal Law

DEFINITION

There are as many definitions of a crime as there are textbooks on criminal law. This is because it is difficult to attach an exact definition to something which has many aspects; from motoring offences to murder; from theft to treason; from bigamy to blackmail and so on. From these examples it is possible to see the great variety and difference in gravity of the offences, although they are all crimes.

Earlier in the book, criminal law was classified as public law, because it is an offence against the State and is punished by the State. It would appear, therefore, first that a definition of a crime must show that an offence is against the public, although it might affect only one person, and, secondly, that the person who committed an offence either by a positive act or by omitting to do something which was a legal duty will be punished in some manner prescribed by the State. A definition which contains these points arose in the House of Lords when Lord Tucker, in *Board of Trade v. Owen* (1957) considered that the correct definition of a crime in the criminal law was the following passage from Halsbury's Laws of England. "A crime is an unlawful act or default which is an offence against the public and renders the person guilty of the act or default liable to legal punishment."

J.W. Brown (1996) *Brown: GCSE Law*. 6th edition. London: sweet & Maxwell Ltd. p.231.

a. Falso o verdadero. Corrija las opciones falsas.

1. It's very simple to give a definition of Criminal Law.
2. The examples of crimes provided are not so different.
3. Only the State punishes Criminal Law.
4. According to the text, if a person omits to do something, it's also considered a crime.

b. Responder.

1. What types of crimes are mentioned in the 1st paragraph?
2. Why is criminal law classified as public law”?
3. What is a crime according to the text?

TEXTO 2: Criminal Law – Some concepts

Lea el texto a continuación prestando atención a las palabras subrayadas.

Parte 1: Lea el texto y exprese en español, con sus propias palabras, de qué se trata el mismo.

Criminal law (also known as **penal law**) is the body of law that **regulates governmental sanctions** (such as imprisonment and/or fines) as retaliation for crimes against the social order. The goal of this process is that of achieving criminal justice. According to criminal law, crimes are offences against the social order and government officials are responsible for the **prosecution** of offenders. The major objective of criminal law is deterrence and punishment, while that of civil law is individual compensation. Criminal offences consist of two distinct elements; the physical act (the *actus reus*, guilty act) and the requisite mental state with which the act is done (the *mens rea*, guilty mind). For example, in murder the “actus reus” is the unlawful killing of a person, while the “mens rea” is malice aforethought (the intention to kill or cause grievous injury). The criminal law also details the defenses that defendants may bring to lessen or negate their liability (criminal responsibility) and specifies the punishment which may be inflicted. Criminal law neither requires a victim, nor a victim’s consent, to prosecute an offender. Furthermore, a criminal prosecution can occur over the objections of the victim and the consent of the victim is not a defense in most crimes.

Criminal law in most jurisdictions both in the common and civil law tradition is divided into two fields:

- **Criminal procedure** regulates the process for addressing violations of criminal law

- **Substantive criminal law** details the definition of, and punishments for, various crimes.

Criminal law distinguishes crimes from civil wrongs such as tort or breach of contract. Criminal law has been seen as a system of regulating the behaviour of individuals and groups in relation to societal norms at large whereas civil law is aimed primarily at the relationship between private individuals and their rights and obligations under the law. Although many ancient legal systems did not clearly define a distinction between criminal and civil law, in England there was little difference until the codification of criminal law occu-

red in the late nineteenth century. In most U.S. law schools, the basic course in criminal law is based upon the English common criminal law of 1750.

A society should not be judged on how it treats its outstanding citizens but by how it treats its criminals.....Fyodor Dostoyevsky

Parte 2: Explique la diferencia entre “mens rea” y “actus reus”

Mens rea is a criminal law concept which focuses on the mental state of the accused and requires proof of a positive state of mind such as intent, recklessness, or wilful blindness.

An illustration of mens rea would be the difference between hurting someone voluntarily and accidentally; in the first case, the mens rea, the intention to hurt, is present but not in the second one.

Another example: if the intention to kill or to act in a way that can predictably lead to the death is not proved, one can not be found guilty of the crime of murder because the definition of this crime includes this condition (to be convicted, you need both the mens rea and the Actus reus, also known as the “psychological” and “material” elements); without the mens rea for murder, the accusation will usually turn into manslaughter, a different but similar crime that does not require the same mens rea.

Examples of mens rea in statutes

Model Penal Code: A person commits murder if he (1) *purposely or knowingly* (2) causes the death of a human being.

Common Law: (a) It shall be unlawful for a person to cause the death of a human being with *malice aforethought*. (b) A violation of this section is murder in the second degree.

Actus reus is the action (or inaction, in the case of criminal negligence and similar crimes which are sometimes called acts of omission) which, in combination with the mens rea (“guilty mind”), produces criminal liability in common law based criminal law jurisdictions such as the United States, Canada and the United Kingdom. According to criminal jurisprudence, there must be a concurrence of both *actus reus* and *mens rea* for a crime to have been committed.

The phrase derives from a quotation from Edward Coke *actus non facit reum nisi mens sit rea*, which roughly translated means ‘an act does not make someone a criminal unless (their) mind is guilty’.

Parte 3: Lea la siguiente sección y elabore un resumen, en español, entre 80 – 100 palabras del mismo.

Incomplete crimes: attempts, conspiracy and counselling

The *actus reus* is often considered to be the criminal act. But what about

cases where there was no actual criminal act committed? Can there nonetheless be criminal liability? There is a category of crimes that are sometimes called “incomplete crimes” where the concept of an act is interpreted to include crimes that are not only those crimes that completely carried out but are partially completed. Some might say that in just planning to commit a crime there is no act. However, it is possible to consider that the planning of a crime involves the “act of planning.”

The first group of incomplete crimes are the attempted crimes, for instance attempted murder such as when someone points a gun, fires and does not hit the intended victim, killing no one. Even though the *actus reus* has not been completed, the intent and the attempt — which is considered a criminal act in itself — are sufficient to impose criminal liability. Section 24 of the Canadian Criminal Code defines being guilty of attempt as follows: ‘anyone who, with the intent to commit an offence, does or omits to do anything for the purpose of carrying out his intention is guilty...’. Compare this with section 5.01 of the Model Penal Code or the vague definition in the Revised penal law of New York of 1967 section 110, “conduct which tends to effect the commission of .. the crime”.

The problem with all definitions of attempted crimes is that the question of what act is sufficient to make the attempt more than just the expression of a thought to commit a crime, i.e. the remoteness of the act from the crime, in order to impose criminal liability. There may also be criminal liability even when the attempt to commit a crime is impossible, such as attempting to steal from an empty cash register or an empty pick pocketed wallet. A classic example is the attempt of someone to steal their own umbrella (thinking it was someone else’s umbrella). As Viscount Dilhorne stated in the House of Lords case of Haughton v. Smith [1975] AC 476 at 506:

A man taking his own umbrella from a club, thinking it the property of someone else, does not steal. His belief does not convert his conduct into an offence. In my view, it matters not that the crime cannot be committed as a result of physical impossibility, e.g. the absence of the property he wants to steal, or of legal impossibility. In either case he cannot be convicted of an attempt when he could not be convicted of the full offence if he had succeeded in doing all that he attempted to do. Conduct which is not criminal is not converted into criminal conduct by the accused believing that a state of affairs exists which does not.

Under the ancient common law when two or more people plan to commit a crime their act of planning, i.e. conspiracy, may create criminal liability. The English Court of the Star Chamber decided in the 17th century that only an agreement was needed between two people for conspiracy to be found. In the federal and state jurisdictions of the United States ‘conspiracy to commit a crime’ is a criminal act. In United States v. Shabani (1994), the

Supreme Court ruled: "...Congress intended to adopt the common law definition of conspiracy, which does not make the doing of any act other than the act of conspiring a condition of liability..." Note that a "conspiracy", under laws in the United States does not require there to be more than one person involved for a finding of criminal liability.

"Counselling to commit a crime", "incitement to commit a crime" or "facilitation to commit a crime" may each also be considered crimes in different jurisdictions.

Coke's *Institutes*, Part III (1797 edition) chapter 1, folio 10.
www.FindLaw.com

a. Responder en español lo siguiente.

1. What differences does the text state concerning *Criminal Law* and *Civil Law*?
2. What do you understand by "actus reus" and "mens rea"?
3. What happens when there is a concurrence of both "actus reus" and "mens rea"?
4. State the differences between "attempt, conspiracy and counselling"

b. Relea el texto y subraye todas las frases verbales en tiempo "pretérito".

c. Relea las partes 1, 2 y 3 y elabore una grilla o listado de términos específicos en inglés (en orden alfabético dentro de lo posible) del área del Derecho Penal con sus correspondientes significados en español.

TEXTO 3: Rape (Slightly modified)

Realice lo siguiente:

a. Extraiga los verbos del texto y clasifíquelos en regulares e irregulares.

Regular Verbs	Irregular Verbs

b. Responda en español las siguientes preguntas.

1. What happened in 1986?
2. What were the two conditions under which a man could be convicted of rape?
3. Could a husband, according to customs, be convicted of rape? Why?
4. What led to the prosecution of husbands?
5. Did the customary view change? When?
6. Since when can we say that a minor could be convicted of rape?
7. What happened before?
8. What did corroboration do?

Few crimes attracted as much emotive reaction or revulsion as rape. Questions about judges' supposedly light sentences on rapists were asked in Parliament and in 1986 the Court of Appeal laid down guidelines for judges who had to sentence such men. The offence was committed under the Sexual Offences (Amendment) Act 1976, where a man:

(a) Had unlawful sexual intercourse with a woman who at the time of the intercourse did not consent to it; and

(b) At the time he knew that she did not consent to the intercourse or was reckless as to whether she consented to it.

At trial, the prosecution had to prove some degree of penetration of the woman.

Traditionally, it was said that a husband could not be guilty of an act of rape upon his wife. Such immunity was confirmed in 1736 when it was declared that *'by their mutual consent and contract the wife gave herself in this kind unto her husband whom she cannot retract.'* Changing social attitudes and the wholly different status of women led to prosecutions of husbands who were estranged from their wives. In R. v. R. (a husband) 1991, the Court of Appeal described this eighteenth-century pronouncement as a common-law fiction which became anachronistic and offensive. Their duty, said the judges, was to remove it from the law. The Court of Appeal and thereafter the House of Lords then dismissed an appeal by a husband who had sexual intercourse with his wife against her wishes a few days after she left him to return to her parents, even though the parties were still married.

Until recently it was presumed that a boy under the age of 14 years could not be guilty of rape. He could, however, always be convicted of the lesser offence of **indecent assault**. Such a presumption was abolished by the Sexual Offences Act 1993.

Such was the nature of a sexual offence that usually only two people could know the truth, and therefore usually only two people could give evidence on the central issue. Allegations of a sexual offence were easily made and were difficult to rebut. The experience over years led the courts to look for other evidence, known as **corroboration**, which strengthened the

woman's evidence in a material respect - for example, a confession by the accused man. The offence was a most serious one and carried a maximum penalty of life imprisonment.

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

TEXTO 4: Mens Rea / Rape

Lea el texto y exprese en español de qué se trata el mismo. Elabore la tarea con un compañero.

Let us take as an example the Sexual Offences Act 1956. Section 1 provides quite boldly that 'it is an offence for a man to **rape** a woman.' There were letters to the press, questions in the Commons and a public outcry when the House of Lords affirmed the need for Mens Rea in rape in *Director of Public Prosecutions V. Morgan* 1975.

Morgan, an NCO in the Royal Air Force, invited three men to go home with him and have sexual intercourse with his wife. He warned them not to be deterred in the event of her struggling; he said that she would in fact consent but was rather 'kinky'. She did struggle — most energetically. Nevertheless the defendants ignored her protests and assumed it was only part of an act. Failure by the prosecution to prove lack of consent would, of course, lead to an **acquittal** (that is a verdict of not guilty) but what if, as happened in this case, there was a misunderstanding as to consent? In short, was a misunderstanding as to consent a defense, or did that mistake also have to be reasonable one?

Lord Cross summarized the question before the House when he said:

"No one suggested that rape was an absolute offence to the commission of which the woman's consent is wholly irrelevant. The point in dispute was as to the quality of belief which entitled the defendant to be acquitted and as to the evidential burden with regard to it."

The House of Lords had to decide whether, in rape, the defendant could properly be convicted notwithstanding that he, in fact, believed that the woman consented if such belief was not based on reasonable grounds.

Lord Hailsham discussed Mens rea and its implications when he said:

"I believe that Mens rea means 'guilty or criminal mind', that mental element in rape is not knowledge but intent, to insist that a belief must be reasonable to excuse it is to insist that either the accused is to be found guilty of intending to do that which in truth he did not intend to do, or that his state of mind, though innocent of evil intent, could convict him if it be honest but not rational."

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

Relea la cita de Lord Hailsham e intente traducirla al español.

TEXTO 5: Infancy

Lea el texto a continuación y realice la tarea que se detalla a continuación del mismo.

In London during the early 1970s, there were enterprising young children who were augmenting their weekly allowances by decapitating parking meters in which there was money and pocked their contents. The local constabulary's earnest inquires would be answered by a chorus of 'Can't touch me, mister, I'm only nine,' and quite correct the little vandals were. The Law presumed that children under ten were **doli incapax** ('incapable of committing a crime'), however wicked the little horrors were.

That principle even availed a child's parents in *Walters v. Lunt* 1951 when they were charged with receiving stolen goods. The property in question was a tricycle taken by their seven-year-old son. As he was too young to steal; it was, of course, impossible for the parents to receive stolen goods. (However, in 1968 there were modifications in the Theft Act. Parents would themselves be guilty of theft since their actions would amount to an act of appropriation).

In serious cases, all there was to do to protect society was to place the child into the care of a local authority and allow the authority to exercise that degree of control which the parents failed to provide.

Children between the ages of ten and fourteen still enjoyed very substantial immunity. In addition to the ordinary burden of proof, the prosecution had also to prove that there was awareness of an unlawful act in the child — they had to show what is known as a '**mischievous discretion**'.

Until very recently it was presumed that a boy under the age of 14 years could not commit the offence of rape. Yet, there was an abolition of such an irrefutable presumption by the passage of the Sexual Offences Act 1993.

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

Complete las ideas a continuación en español

1. In London during the early 1970 there were _____
2. In the parking meters there was _____
3. However, in 1968 there were _____
4. In serious cases, all there was _____
5. The prosecution had also to prove that there was _____
6. Yet, there was _____

TEXTO 6: Manslaughter

Lea el texto a continuación y realice la tarea que se detalla a continuación del mismo.

Firstly in the tragic case of R. v. Maloney 1985, a young man's conviction for murdering his stepfather was set aside. After a dinner party to celebrate his grandparents' ruby wedding the appellant, a soldier, stayed up late with his stepfather. Much wine flowed that evening and both men started talking about guns and their respective abilities to use them proficiently. To put the matter to the test two shotguns were fetched. The two men raced each other to load the guns and then aim them. The younger man, the soldier, not only won that contest but also pulled the trigger of a twelve-bore shotgun. His step father was killed instantly, and the soldier stood trial for murder. Was he guilty of this crime as charged or guilty instead of manslaughter?

The soldier told the police that he didn't aim the gun. He just pulled the trigger and his stepfather was dead. Later, in court, he told the jury:

"I never deliberately aimed at him and fired at him intending to hurt him, or to aim close to him intending to frighten him ... I never conceived that what I was doing might cause injury to anybody. It was just a lark.

The House of Lords went on to lay down that in cases of murder trials, the jury had only to consider two questions. Firstly, was death or really serious Injury a 'natural consequence' of the defendant's voluntary act? Secondly, did the defendant foresee that outcome as being a natural consequence of his act? The jury should then be told that if they answer 'yes' to both questions, it was a proper inference for them to draw that he intended that consequence.

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

Seleccione la mejor opción

1. The tragedy took place
 - a) In the evening;
 - b) At noon;
 - c) At night.
2. When the accident happened
 - a) Both men were sober;
 - b) Both were under the influence of alcohol;
 - c) Only the grandson was drunk.
3. The soldier
 - a) Intended to kill the other man;
 - b) Pulled the trigger by mistake;
 - c) Neither of them.
4. The soldier told the Jury
 - a) He intended to frighten his stepfather;
 - b) He was not aware of the consequences;
 - c) He was too drunk to be aware of the situation.

TEXTO 7: Murder (Slightly modified)

Lea el texto e identifique casos de “*negative inversion*” en inglés. Luego traduzca las oraciones respectivas con la ayuda de su instructor. Use diccionario.

The grave words ‘**malice aforethought**’ were used to describe the Mens rea of murder. By no means did the words put forward any special ill-will or careful preparation beforehand.

Not only did the prosecution have to prove that the defendant unlawfully injured a living person but also that the former did so with Mens Rea in order to secure a conviction for murder. In addition, on no accounts was death to have occurred a year and a day after the fatality. Obviously the victim had to be alive at the time of the Actus Reus — never would a man be convicted of murder if he stabbed a corpse. In that case, he would be convicted of **attempted murder** instead.

Obviously, hardly ever could be a man convicted of murdering someone who was in his class at school and who passed away fifty years after he blacked his eye behind the gym. This was for two reasons: firstly, the law called for death to occur within a year and a day of the injury, and, secondly, the injury had to bring about the victim’s death.

The prosecution must prove that what the defendant did was a **sine qua**—that is, that the victim’s death was the result of the defendant’s action and not the result of any other factor. For example, if after a fracas in a public house a man went to see his doctor for a bloody nose and then received such hopelessly negligent treatment that he died, the court must decide whether it was the initial injury to the nose or the doctor’s incompetence which led to his death. Not until 1956 was that situation brought up. The defendant stabbed a man in a café. That man later died and James Jordan was charged with his murder. However, fresh medical evidence turned up before the court of appeal that the man’s decease was not set off by the stab but rather by the treatment with an antibiotic drug to which the patient was intolerant.

Nor did malice afterthought require a man actually to intend to cause death. For instance, when a burglar was about to rob a factory, he knocked a security ward over with a night stick. Although he did not intend to kill him, the blow was so powerful that the poor night watchman passed on. Nevertheless, if death was a natural consequence of the thief’s blows on the man’s skull, (provided that the assailant foresaw that dreadful consequence), the charge would be one of murder.

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

a. Extraiga ejemplos de verbos seguidos por preposiciones del texto y explique sus significados en español. USE diccionario.

b. Expresar en contenido del texto en español.

TEXT 8: Case Study: Jean’s Death

La gente en todo el mundo tiene una fascinación particular con la ley en lo que se refiere a los crímenes y los criminales que los cometen. Abra cualquier periódico de EE. UU. o encienda las noticias de televisión cualquier día del año, y sin dudas se discutirá una historia relacionada con un crimen. En la ley, solo debemos preocuparnos por la responsabilidad legal del crimen, pero las cuestiones morales siempre tendrán un papel en el desarrollo de la ley (como en la legalización del aborto) y en las defensas a las comisiones de un crimen (como la incapacidad mental). ¿Cómo concilias los problemas morales y legales involucrados en la comisión de un crimen?

Actividad: Su instructor lo ubicará en grupos para esta actividad. En la siguiente historia, hay seis personajes, ellos son:

The bar owner		Carl	
Jack		Jean	
Man leaving the bar		Gail	

Realice las siguientes tareas después de haber leído el caso:

1. Utilizando la lista, individualice los personajes (de 1 a 6, siendo 1 el más y 6 el menos responsable) en orden de su responsabilidad moral por la muerte de Jean.
2. Ahora, trabaje con otros miembros de su grupo y decida sobre la clasificación de los seis personajes como grupo. Debe llegar a una decisión unánime.
3. Explica las respuestas del grupo a la clase y trata de llegar a un consenso.

Jean’s Death

Around 5 P.M. one evening, a man and his wife entered the Bluebird Bar. The man, Jack, order a whiskey for himself and a cola for his wife, Gail. Jack continued to order the same drinks about every ½ hour.

At 11 P.M. the bar owner refused to serve Jack any more drinks because he was obviously extremely intoxicated and bothering other customers. Gail was used to Jack’s behavior and never asked her husband to quit drinking.

“Are you driving him home or should I call a taxi?” the bar owner asked Gail. Jack shouted, “Get out of my face! And neither of you can stop me! Jack then shoved the owner aside and walked out the door. The owner just shrugged his shoulders and walked off. Gail went to the pay phone in the corner to call her sister for a ride.

As Jack left the bar a man walking by the bar shouted to him: “Hey buddy, call a taxi!” When Jack drove off, the man shook his head and walked down the street.

Meanwhile, Jean and Carl were having a lover's quarrel on the next corner. The quarrel soon escalated to a major fight, and Carl struck Jean, saying, "Don't ever tell me not to touch you again. I'll show you who's boss here". At that point, Jean, crying hysterically and paying no attention at all to the traffic, ran into the street directly in front of Jack's car. Jack was not able to stop in time and Jean was killed instantly.

Essential terms

- **Culpability:** blameworthiness; requires that a person acted purposely, knowingly, recklessly, or negligently (a requirement of the Model Penal Code –MPC- a sample criminal code sponsored by the American Law Institute and approved in 1962; has been adopted in whole or part in most US states)
- **Mens Rea:** the mental state, the intent.
- **Actus Reus:** the act – the wrongdoing that can be an act or an omission.
- **Causation:** The act (actus reus) is the cause of (related to) the harm done.
- **Concurrence:** the union of the mental state and the intention.
- **Standards of proof:** the level of the evidence that must be presented in a trial to establish guilt of the defendant, there are two levels:
 - ✓ *Beyond a reasonable doubt:* the facts proven in a trial MUST establish guilt.
 - ✓ *Preponderance of evidence:* the evidence offered in a trial must show that the issue to be proved is more probable than not.

Putting the terms to use

In order to find someone guilty of a crime, the prosecution has to prove the defendant guilty of all elements of the crime (as defined by statute or at common law) beyond reasonable doubt. Three essential elements of all crimes are:

1. Mens rea: (replaced by culpability in some states under the model Penal Code);
2. Actus reus and
3. Causation.

A. In the same groups used for "Discovering connections", determine if the party you found morally responsible for Jean's death could also be found legally responsible from the aspect of criminal law. Are the common elements of crime present? (Hint: in determining whether mens rea is present or not, use the MPC terms *purposely, knowingly, recklessly or negligently*).

B. There is no criminal liability for tavern owners who continue to sell drinks to persons who are obviously intoxicated when those patrons later commit crimes such as **vehicular homicide** (killing of another person through dangerous use of a motorized vehicle). However, some states do have **dramshop** or civil damage statutes that place *civil liability* on a tavern owner in some instances. In your groups, look at the following

statute regarding civil liability of a tavern owner for acts committed by a patron who is intoxicated. Would the tavern owner in “Discovering connections” be civilly liable for the death of Jean?

Every person who is injured in person or property by any intoxicated person, has a right of action in his own name, severally or jointly, against any person who by selling or giving alcoholic liquor, causes the intoxication of such person. (Lopez v. Maez, 98 N.M. 625, 651 P.2d. 1269 (1982))

Debra S. Lee et all. (2006) *American Legal English. Using Language in Legal Contexts*. Michigan: The Michigan University Press, pp 64 - 6

Tarea Digital 1

Ud. decide hacer un curso de posgrado en derecho penal en una escuela de derecho Americana. Al comenzar el cursado semestral, le proveen el siguiente material de estudio:



<https://2012books.lardbucket.org/books/introduction-to-criminal-law/> retrieved 28/8/18 11am

Link directo al libro

<https://drive.google.com/file/d/1jIDblMuhj70IoI6gtbq1eW9x-q8EEzUw/view?usp=sharing>

A) Analice el recurso y complete las siguientes tareas de lectura:

- 1) En una primera aproximación al material de estudios, a Ud. le interesa saber qué conceptos estudiará durante el semestre. Lea atentamente la tabla de contenidos del libro y tradúzcala para enviársela a un compañero de universidad en Argentina a quien le interesaría hacer el curso el siguiente año y necesitaría ver el contenido a estudiar.



Utilice el siguiente tutorial para realizar la tabla de contenidos en español: <https://youtu.be/SqViGSliOfU> (retrieved 28/08/2018 10 AM)



Una vez creada la tabla de contenidos, comparta su archivo en el siguiente enlace: https://drive.google.com/drive/folders/1v1A__UK3u7M9bx-sY6gsO7gp0LC-Wsc8B?usp=sharing

2) En grupos, llenen la siguiente ficha descriptiva del material provisto por los tutores del curso.



<https://goo.gl/forms/VCeNYTaT20rKGK4p2>

B) Complemente el material de estudios dado con los siguientes recursos web y esquemátice: una definición de *Derecho Penal* y *elementos constitutivos de un crimen* utilizando organizadores gráficos.

Recursos web	Organizadores Gráficos	
<p>https://en.wikipedia.org/wiki/Element_(criminal_law) retrieved 28/8/2018 11 am</p> <p>https://www.law.cornell.edu/wex/criminal_law retrieved 28/08/2018</p>	<p>http://popplet.com/</p> 	<p>https://www.mindmeister.com/es</p> 

C) Del material leído, extraiga 10 términos de derecho penal inglés y vuélquelos a la base de datos habilitada en el portal SEO (diríjase a la sección e identifique el recurso *Base de Datos Términos Jurídicos*)



Capítulo V

Ilícito

Tort Law

“*Tort*” según Guillermo Cabanellas de las Cuevas y E. Hoague² significa: “acto ilícito”. Acto del que resulta una responsabilidad extracontractual. El concepto de “tort” se aplica a los actos ilícitos desde el punto de vista civil. Comprende tanto los delitos como a los cuasidelitos.

Explique el significado de los siguientes términos

- *Tort* – feator:
- *Tort liability*:
- *Tortious act*:
- *Tortious liability*:

Liability

¿Qué significado tiene la palabra “*liability*”?

Explique el significado de las siguientes frases.

- *Liability bond* - *Liability created statute* - *Liability for abstention* - *Liability for animals*
- *Liability for chattels* - *Liability for damages* - *Liability for unlawful acts* - *Liability imposed by law*
- *Liability in contract* - *Liability in personam* - *Liability in rem* - *Liability in solido* - *Liability insurance*
- *Liability to make good* - *Liability without fault* - *Liabile civilly* - *Liabile criminally* - *Liabile for tax*
- *Liabile to action* - *Liabile to duty* - *Liabile to penalty*

² Cabanellas & Hoague *Diccionario jurídico – Law Dictionary*. Buenos Aires: Heliasta, 2001.

Observe las asociaciones de palabras a continuación y explique sus significados.

- *Breach of contract - seeking relief - False imprisonment - conversion and trespass to chattel*
- *Alleged violation - compensation for damages - Injunctive relief - criminal prosecution*

TEXTO 1: Tort

Lea el texto y grafique la información del mismo realizando un esquema o cuadro.

In the common law, a **tort** is a civil wrong for which the law provides a remedy. The term comes from Law French and means, literally, ‘a wrong’.

The “law of torts” is a body of civil law or private law that covers the various legal (money damages) and equitable remedies which the law provides for civil wrongs arising from extra-contractual liability, i.e., other than those wrongs which arise from a breach of contractual obligations.

Under United States law, torts are generally divided into two categories: intentional torts and non-intentional torts. Intentional torts include those actions that are intentional and voluntary and that are made with knowledge by the tortfeasor (i.e. the person who committed the tort) upon the plaintiff (the one who brings the complaint seeking relief). Intentional torts include: battery, assault (apprehension of harmful or offensive contact), false imprisonment, intentional infliction of emotional distress, libel, the real property tort of trespass to land, and the personal property torts of conversion and trespass to chattels.

Amongst unintentional torts one finds negligence as being the most common source of litigation in most American courts. It is a form of extra contractual liability that is based upon a duty of care of a reasonable person, who, being the proximate cause of damages, and but for the tortfeasor’s act, is the cause of damages to the plaintiff. Other non-intentional torts include negligent infliction of emotional harm.

There is some overlap between tort law and criminal law - some acts may at once constitute both a tort and a crime - and many crimes may be viewed as particularly egregious torts. A cause of action in tort can also be distinguished from a criminal prosecution which may arise from the alleged violation of a criminal statute. The former is typically prosecuted by a private citizen, whereas the latter is prosecuted by the state, and one or both may be brought forth independently. Moreover, remedies for torts can take the form of compensation for damages or injunctive relief. A criminal prosecution usually results in the imposition of a sentence, such as a fine and/or incarceration.

TEXTO 2: Origin and Relationship to Tort (Part 1)

Lea el texto en español lentamente en voz alta con la ayuda de su instructor. Preste especial atención durante la lectura a las frases subrayadas y sus correspondientes equivalentes en español. Discuta el significado de las mismas en la medida que avanza en la lectura del texto.

Contract law has come to us from common law and it is said that it is an offspring of tort law. Both contracts and torts give rise to obligations. But tort obligations (i.e. the obligation to indemnify for your negligence) are imposed by the law; it is not normally a choice one makes. Contracts, on the other hand, are a vehicle by which persons voluntarily create obligations upon themselves.

In some circumstances, you can contract your way out of tort liability. For example, the owner of a sporting event stadium or a concert hall may have a disclaimer on the back of your ticket (a tiny contract but a contract nonetheless) which says that they cannot be held liable for any accidents on the premises. This is an attempt to contract out of tort liability. In addition, tort liability does not require consideration (see discussion on “consideration” below). It should also be said that the existence of a contract does not necessarily relieve a person of liability under tort law between the contracting parties, unless the contract specifically says so.

Promises are what contracts are all about. A contract is made up of a promise of one person to do a certain thing in exchange for a promise from another person to do another thing. Contract law exists to make sure that people keep their promises and that if they do not, the law will enforce it upon them.

Contract law is based on several Latin legal principles, the most important of which is *consensus ad idem*, which means a meeting of the minds between the parties or, in other words, a clear understanding, offering and acceptance of each person’s contribution. Lawyers say that it is from the moment of “*consensus ad idem*” that a contract is formed and may be enforced by the courts.

Cognates & false cognates – Cognados y falsos cognados

- Busque el diccionario el significado de los siguientes términos: “*consideration, interpretation, construe y construction*” Explique en qué sentido se usan los mismos en la jerga jurídica.

TEXTO 3: Origin and Relationship to Tort (PART II)

Lea el texto y analice las formas negativas que aparecen en el mismo.

So a contract requires an agreement between the parties. But not all agreements are contracts. Non-business, religious, or charitable agreements are not always contracts. The same has been said of family or household

agreements (in one 1991 case, a casual arrangement between friends to share hockey tickets was held not to be a contract: *Eng v. Evans*). In fact, there exists a common law presumption against such agreements being contracts, although this presumption can be rebutted. Conversely, where an agreement issues from a commercial relationship, it will be presumed to be a contract.

An example of family agreements or situations not being construed as being contracts arose in Canada several decades ago. At the time, there were no laws giving common-law spouses any rights to their spouses' property even if they had been living together for a long time and both spouses had contributed to the growth of those assets. Rather than construe a contract out of the situation, the Canadian courts preferred using another mechanism, that of unjust enrichment, to resolve the unfairness.

Contract law is said to be a part of "private law" because it does not involve or **bind** the state or persons that are not parties to the contract. Some legal commentators have described contract law as a miniature legal system which persons establish between themselves; the contract becoming **binding** upon them as a sort of private and self-imposed law. Thus, contracts are voluntary and require an "exercise of the will of the parties".

www.duhaime.org

a. Responda en español.

1. What does a contract require?
2. What characteristics does "an agreement" have?
3. What does the "Balfour v. Balfour" case exemplify?

b. Observe la palabra "bind" en el último párrafo. Busque su significado en el diccionario y elabore una lista de todos los significados que la misma posee.

c. Indique cuál es la raíz de las palabras siguientes y luego derívelas.

Agreement - presumption - conversely - construe - unjust enrichment - unfairness - allowance - arrangement - readily

d. Observe en el texto la palabra "which" Explique los significados de la misma.

TEXTO 4: Law and Morality

Lea el texto analizando cuidadosamente las palabras subrayadas. Luego:

a. Realice una lista de palabras similares y completándola con otras extraídas de textos anteriores en éste capítulo.

b. Discuta con sus pares y su instructor en la clase el significado de los conceptos de “ley” y “moral” según los presenta el texto. Exprese si está de acuerdo o no con los mismos y que opina ud. al respecto.

It was a hot summer's day when Tom parked his car in the High Street. The Sun was so warm that the tax disc in its plastic holder fell off the windscreen onto the front seat. Unfortunately a traffic warden passed by soon afterwards and noticed what had happened. So a month later Tom was summoned to the local magistrates' court charged with failing to display a valid tax disc. Dick returned home early one afternoon to discover his wife in bed with Harry, his best friend. Worse still, she told him that Harry was the real father of Samantha, whom Dick had always loved as his daughter. Dick was so distressed that he killed himself by jumping out of the window of the fourteenth-floor flat.

Who do you think is the more immoral, Tom or Harry?

The Law will punish Tom, but Harry cannot be prosecuted for any crime.

The 'moral' of the stories is that law and morality must not be confused.

Obviously, the most heinous crimes are also considered by most people to be gravelyimmoral — for example murder, rape and theft. In recent years changing moral attitudes have indeed influenced the criminal law: to take one instance, following the Suicide Act 1961, suicide is no longer a crime.

Occasionally, however, the law does still deliberately set out to punish the immoral. To see how this has been done in recent years, some understanding of the law of conspiracy is helpful, and we will illustrate this first by a case which concerned a civil wrong — trespass — rather than an immoral action. Trespass — entering without force on to another's land without his permission - has always been merely a civil wrong against the occupier of land for which he could claim compensation from the trespasser, and not a crime. This is why an uninvited visitor into the Queen's bedroom in Buckingham Palace could not be prosecuted for his nocturnal wanderings (see Unit 6.6). The sign TRESPASSERS WILL BE PROSECUTED was long called a 'wooden he' because a person can only be prosecuted for a crime. However, it now seems that the erectors of such signs were correctly, if fortuitously, anticipating a development in the law.

Richard Bruce. (1994). *Success in Law*. 4th edition. London: John Murray Ltd.

Prefixes and Suffixes – Prefijos y Sufijos

a. Busque en el texto palabras que contengan los siguientes prefijos y sufijos

un-

im-

-er

-ly

-ed

-tion

-ment

-or

b. Derive las palabras encontradas

TEXTO 5: McDonald's coffee case

Lea el caso a continuación y discútalo con sus pares e instructor. ¿Cree ud que un caso de esta índole podría ser llevado a la corte en Argentina? ¿Por qué sí? ¿Por qué no? ¿Bajo que circunstancias?

Stella Liebeck v. McDonald's Corporation, a.k.a. the “**McDonald's coffee case**”, is a well-known court case in the United States. The brief summary that is often retold is similar to this: In February, 1992, Liebeck, a 79 year old woman from Albuquerque, New Mexico, ordered coffee from the drive-thru of a local McDonald's restaurant, which she then spilled on her lap. The hot coffee burned her, and she subsequently sued McDonald's. The jury awarded her 2.9 million dollars US in damages. Based on this summary, the case has become emblematic of frivolous and outrageous lawsuits for many people, and is often used as an example of the need for tort reform in the United States legal system. The summary, however, omits a large amount of relevant information, including the fact that either an appeals court (or the original trial judge) reduced the award to a total of \$640,000. Because the case was not officially reported by the system, the exact circumstances of whom and how the original judgment was reduced are not clear.

The person driving the vehicle was Liebeck's grandson Chris, who had parked the car so that Liebeck could add cream and sugar to her coffee. She placed the coffee cup between her knees and attempted to remove the lid. In the process, she spilled the entire cup of coffee on her lap. Liebeck was wearing sweatpants; they absorbed the coffee and held it against her skin. She was taken to the hospital, where it was determined that she had suffered third-degree burns over six percent of her skin. She remained in the hospital for eight days while she underwent skin grafting. Two years of treatment followed. Liebeck sought to settle with McDonald's for \$20,000 to cover her medical costs, but the company offered \$800. When McDonald's refused to raise their offer, Liebeck filed suit.

During the case it was discovered that McDonald's required franchises to serve coffee at 180-190 degrees Fahrenheit (82-88 degrees Celsius). At that temperature, the coffee would cause a third-degree burn in two to seven seconds. When questioned, witnesses for McDonald's testified that:

- consumers were not aware the coffee was so hot that there was a risk of serious burns

- McDonald's did not warn customers of this risk
- they could offer no explanation as to why there was no warning
- McDonald's did not intend to reduce the heat of its coffee

Documents obtained from McDonald's also showed that from 1982 to 1992, more than 700 people were burned by McDonald's coffee with varying degrees of severity. These incidents resulted in many other legal claims.

The jury found that McDonald's was 80% responsible for the incident, while Liebeck was 20% at fault. They awarded her \$200,000 in compensatory damages, which was then reduced by 20% to \$160,000. In addition, they awarded her \$2.7 million in punitive damages. However, the judge reduced this amount to \$480,000; thus Liebeck was awarded \$640,000 in total. However, the amount she actually received from McDonald's is unknown. Rather than appealing the decision, McDonald's entered into secret negotiations with Liebeck and came to a settlement.

The McDonald's coffee case is widely known, and is often referred to as the case where the old lady spilled coffee on herself, sued McDonald's and received millions of dollars. It has spawned a commonly-forwarded email entitled "The Stella Awards", which consists of fabricated lawsuits that are claimed to be true. This, in turn, provided the inspiration for the True Stella Awards, a mailing list by Randy Cassingham which provides reports and commentary on actual cases within the American court system.

http://www.wordiq.com/definition/Stella_Liebeck_v_McDonald%27s_Corporation

Legal Jargon and Adjectives – Jerga Jurídica y Adjetivos

- **Extraiga palabras o frases usadas en la jerga jurídica del texto. Explique sus significados según sus usos en el texto.**
- **Lea el texto detenidamente y subraye las palabras o frases que son usadas en función adjetiva. Luego, explique el sentido de las mismas.**

TEXTO 6: The 2007 True Stella Awards Winners

Lea el texto y realice las tareas a continuación.

#3: Sentry Insurance Company. The company provided worker's compensation insurance for a Wisconsin "Meals on Wheels" program. Delivering a meal, a MoW volunteer (who was allegedly not even wearing boots) slipped and fell on a participant's driveway that had been cleared of snow, and Sentry had to pay to care for her resulting injuries. Sentry wanted its money back, so it sued the 81-year-old homeowner getting the Meals on Wheels service. It could have simply filed for "subrogation" from her homeowner's

insurance company, but by naming her in the action, it dragged an old lady into court, reinforcing the image of insurance companies as concerned only about the bottom line, not “protecting” policyholders from loss.

#2: The family of Robert Hornbeck. Hornbeck volunteered for the Army and served a stint in Iraq. After getting home, he got drunk, wandered into a hotel’s service area (passing “DANGER” warning signs), crawled into an air conditioning unit, and was severely cut when the machinery activated. Unable to care for himself due to his drunkenness, he bled to death. A tragedy, to be sure, but one solely caused by a supposedly responsible adult with military training. Despite his irresponsible behavior -- and his perhaps criminal trespassing -- Hornbeck’s family sued the hotel for \$10 million, as if it’s reasonably foreseeable that some drunk fool would ignore warning signs and climb into its heavy duty machinery to sleep off his bender.

The winner of the 2007 True Stella Award: Roy L. Pearson Jr. The 57-year-old Administrative Law Judge from Washington DC claims that a dry cleaner lost a pair of his pants, so he sued the mom-and-pop business for \$65,462,500. That’s right: more than \$65 million for one pair of pants. Representing himself, Judge Pearson cried in court over the loss of his pants, whining that there certainly isn’t a more compelling case in the District archives. But the Superior Court judge wasn’t moved: he called the case “vexatious litigation”, scolded Judge Pearson for his “bad faith”, and awarded damages to the dry cleaners. But Pearson didn’t take no for an answer: he’s appealing the decision. And he has plenty of time on his hands, since he was dismissed from his job. Last we heard, Pearson’s appeal is still pending.

<http://www.stellaawards.com/2007.html>

- a. **Identifique por lo menos 3 verbos auxiliares que indiquen tiempo y modalidad y traduzca sus contextos.**
- b. **Extraiga por lo menos 5 ejemplos de cognados.**
- c. **Subraye 3 casos de negación en el texto leído.**
- d. **Identifique 3 palabras que contengan sufijos y 3 que contengan prefijos.**
- e. **Señale al menos tres ejemplos de pronombres relativos y traduzca el contexto donde aparecen los mismos.**
- f. **Cree Ud. que se le daría curso a casos de esta naturaleza en nuestro país? ¿Por qué? ¿Por qué no?**
- g. **Transcriba el texto en español.**

A continuación, decide comprar el libro de los premios Stella. Visite los siguientes recursos y complete el cuadro:



https://www.amazon.com/True-Stella-Awards-opportunists-frivolous/dp/0525949135/ref=sr_1_1?ie=UTF8&qid=1541936607&sr=8-1&keywords=stella+awards

Título del libro	
Longitud en páginas	
Precio	
Año de publicación	
Autor	
Comentarios de la obra	
Elementos icónicos	

TEXTO 7: *Res ipsa loquitur*

Lea el texto y exprese el contenido del mismo en español.

From the Latin, meaning literally, “the thing speaks for itself”, the doctrine of *res ipsa loquitur* is applied to claims which, as a matter of law, do not have to be explained beyond the obvious facts. It is most useful to plaintiffs in negligence cases.

To use *res ipsa loquitur* in the context of negligence, for example, the plaintiff must prove that:

1. The harm would not ordinarily have occurred without someone’s negligence
2. The instrumentality of the harm was under the exclusive control of the defendant at the time of the likely negligent act
3. The plaintiff did not contribute to the harm by his own negligence.

For instance, Plaintiff Doe is injured when an elevator he has entered plunges several floors and stops abruptly. Roe Corporation built, and is responsible for maintaining the elevator. Doe sues Roe and during the proceedings, Roe claims that Doe’s complaint should be dismissed because he has never proved, or for that matter even offered, a theory as to why the elevator functioned incorrectly. Therefore, argues Roe, there is no evidence that they were at fault in the incident. The court may hold that Doe does not have to prove anything beyond the fall itself. The elevator malfunctioned; Roe was responsible for the elevator

in every respect, so they are responsible for the fall. The thing speaks for itself.

The principle of *res ipsa loquitur* was first put forth in the Byrne v. Boadle case of 1863. Byrne was struck by a barrel of flour falling from a second-story window. The court's presumption was that a barrel of flour falling out of a second-story window is itself sufficient evidence of negligence:

We are all of opinion that the rule must be absolute to enter the verdict for the plaintiff. The learned counsel was quite right in saying that there are many accidents from which no presumption of negligence can arise, but I think it would be wrong to lay down as a rule that in no case can a presumption of negligence arise from the fact of an accident. Suppose in this case the barrel had rolled out of the warehouse and fallen on the plaintiff, how could he possibly ascertain from what cause it occurred? It is the duty of persons who keep barrels in a warehouse to take care that they do not roll out, and I think that such a case would, beyond all doubt, afford prima facie evidence of negligence. A barrel could not roll out of a warehouse without some negligence, and to say that a plaintiff who is injured by it must call witnesses from the warehouse to prove negligence seems to me preposterous.

The present case upon the evidence comes to this, a man is passing in front of the premises of a dealer in flour, and there falls down upon him a barrel of flour. I think it apparent that the barrel was in the custody of the defendant who occupied the premises, and who is responsible for the acts of his servants who had the control of it; and in my opinion the fact of its falling is prima facie evidence of negligence, and the plaintiff who was injured by it is not bound to show that it could not fall without negligence, but if there are any facts inconsistent with negligence it is for the defendant to prove them. Chief Baron Pollock

http://www.wordiq.com/definition/Res_ipsa_loquitur

Words of latin origin – Palabras de origen latino

Las frases “*Res ipsa loquitur*” y *prima facie*” provienen del latín. Explique el significado de las mismas según el contexto del texto.

TEXTO 8: Nuisance and Defamation.

Leer los siguientes textos y realice las actividades que se les solicita.

Nuisance

Legally, the term “nuisance” is traditionally used in three ways: (1) to describe an activity or condition *that* is harmful or annoying to others (example- indecent conduct, a rubbish heap or a smoking chimney); (2) to describe the harm caused by the before-mentioned activity or condition

(example- loud noises or objectionable odors); and (3) to describe a legal liability (responsibility) that arises from the combination of *the two*. The law of nuisance was created to stop *such bothersome activities* or conduct when they unreasonably interfered either with the rights of other private landowners (example- private nuisance) or with the rights of the general public (example-public nuisance).

The tort of nuisance allows a claimant (formerly plaintiff) to sue for most acts that interfere with *their* use and enjoyment of their land. A good example of this is in the case of *Jones v Powell*. A brewery made stinking vapors which wafted onto neighbors' property, damaging *his* papers. As he was a landowner, the neighbor sued in nuisance for this damage.

Nuisance deals with all kinds of things that spoil a landowner's enjoyment of his property.

Defamation

Defamation is tarnishing the reputation of someone; it is in *two parts*, *slander* and *libel*. Slander is spoken defamation and libel is printed and broadcast defamation, both share the same features. Defaming someone entails making a factual assertion for *which* evidence does not exist. Defamation does not affect or hinder the voicing of opinions, but does occupy the same fields as rights to free speech in the First Amendment to the Constitution of the United States.

Adapted from http://en.wikipedia.org/wiki/Tort_law#Overlap_with_criminal_law

a. Responder en español.

1. In what ways is the term *Nuisance* usually employed?
2. What is the purpose of the Law of Nuisance?
3. Are Slander and Libel synonymous? Why? Why not?

b. Diga a que se refieren las palabras o frases a continuación.

1. That
2. The two
3. Such bothersome activities
4. Their
5. His
6. Two parts
7. Which

Capítulo VI
Otras ramas del Derecho Privado: Familia y Contratos
Other branches of Private Law: Family & Contracts

Word association - Asociación de palabras (Family / civil)

Con la ayuda de un diccionario traduzca las siguientes asociaciones más comunes de las palabras *civil* y *family*.

	<i>Liberties</i>
	<i>Rights</i>
	<i>Law</i>
	<i>practice law & rules</i>
	<i>Procedure</i>
CIVIL	<i>Service</i>
	<i>Servant</i>
	<i>Court</i>
	<i>Contract</i>
	<i>Disobedience</i>
	<i>Wrong</i>
	<i>Law</i>
	<i>Allowance</i>
FAMILY	<i>Violence</i>
	<i>Court</i>
	<i>Divorce</i>
	<i>Conciliation</i>

TEXTO 1: Family law – a definition

Lea el texto prestando atención a las palabras o frases subrayadas.

Family law is the body of law regulating family relationships, including marriage and divorce, the treatment of children, and economic issues.

Family law has been closely connected with the law of property and succession, and from the records available, it must have had its principal origins in the economic and property questions which have been created by the transfer of a woman from her father's family to the power and guardianship of her

husband. Even in regard to parent and child, such legal concepts as *guardianship*, *custody*, and *legitimacy* have been associated with family power structures and family economic interests.

Family law also has to do with matters of personal status—for example, the question whether X is to be considered married or single or whether Y is to be classed as *legitimate*--although the incidents and importance of these distinctions have often led back to the law of property.

Family law shares an interest in certain social issues with other areas of law (e.g., criminal law). One of the issues that has received a substantially increased amount of attention, from various points of view, is the very difficult problem of violence within the family. This may take the form of physical violence by one adult member on another (in this case the woman is almost always the victim), or by an adult on a child, or of some other form of violent or abusive conduct within a family circle. Difficulties have arisen when the wrongdoer returns to cohabitation with the person who has made a complaint. In serious cases, the only real solution may be a termination of cohabitation, or the removal of an abused child from the family unit, for example, into some form of public or *foster custody*. The problem is one of social importance, and some studies (e.g., several of which have been done in North America) indicate that a high proportion of violent crime originates in family units.

In recent decades, family law has been subject to re-examination in many parts of the world, and the greater legal status and independence acquired by married women has been a catalyst. _

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a. Responda lo siguiente:

1. How can Family law be defined?
2. What have been the principal origins of family law?
3. What other branches of law have often been associated with it?
4. What issue has received increasing attention?
5. What solutions have been suggested when the wrongdoer returns to cohabitation?
6. Has family law been subjected to reassessment? Why?

Definitions - Definiciones³

Una los siguientes conceptos con sus definiciones. Luego agrúpelas en redes semánticas.

- a) Marriage b) Divorce c) Property d) Succession e) Guardianship f) Custody
g) Legitimacy h) Single i) Cohabitation j) Wrongdoer k) Foster

³ *Encarta® World English Dictionary* © & (P) 1999 Microsoft Corporation. All rights reserved. Developed for Microsoft by Bloomsbury Publishing Plc.

- not married.
- the legal relationship between a husband and wife.
- taking up of title or position: the assumption of a position or title, the right to take it up, or the order in which it is taken up
- the act of taking over an official position or title; the right to take over an official position or title, especially to become the king or queen of a country.
- (of a child) born when its parents are legally married to each other.
- the act of living together and having a sexual relationship without being married.
- the legal right or duty to take care of or keep somebody/something; the act of taking care of somebody/something.
- to take another person's child into your home for a period of time, without becoming his or her legal parents - compare ADOPT.
- the state or position of being responsible for somebody/something.
- a person who does something dishonest or illegal.
- a thing or things that are owned by somebody; a possession or possessions see also INTELLECTUAL PROPERTY, LOST PROPERTY, PUBLIC PROPERTY.
- the legal ending of a marriage compare SEPARATION.

Polysemy - Polisemia

Observe las diferentes acepciones de que puede poseer la palabra “issue” en la jerga jurídica⁴. Relea el texto e identifique que significados de la palabra se adecuan mejor al contexto:



- **Commercial Papers**

ISSUE: (v) librar - emitir - poner en circulación.

- **Law of Procedure**

ISSUE: (v) librar - emitir(n) controversia - hechos controvertidos.

IMMATERIAL ISSUE: controversia irrelevante.

LEGAL ISSUE: controversia judicial.

MATTERS AT ISSUE: cuestiones controvertidas - (opp. **MATTERS NOT AT ISSUE:** cuestiones no controvertidas).

to FORMULATE AN ISSUE: (v) delimitar/ limitar/ determinar/ formular los hechos controvertidos - (ídem to **NARROW AN ISSUE**) - (see to **RAISE AN ISSUE**).

to JOIN AN ISSUE: (v) trabar la litis.

to NARROW AN ISSUE: (v) delimitar/ limitar/ determinar/ formular los hechos controvertidos - (see to **RAISE AN ISSUE**).

⁴ Mazzucco & Maránghelo. *Diccionario bilingüe de terminología jurídica*. Buenos Aires: Abeledo – Perrot, 1988.

to RAISE AN ISSUE: (v) exponer los hechos controvertidos.

~ **OF FACT:** cuestiones controvertidas de hecho - (ídem ALLEGATIONS OF FACT).

~ **OF LAW:** cuestiones controvertidas de derecho.

PRECLUSION: cosa juzgada.

- Law of Succession and Trusts

ISSUE: descendientes - descendencia - (see DESCEND-ANT)

LAWFUL ISSUE: descendientes legítimos - (ídem LEGAL ISSUE)

LEGAL ISSUE: descendientes legítimos - (ídem LAWFUL ISSUE)

- **Partnerships and Corporations**

ISSUE: (v) emitir (acciones) - otorgar - expedir - librar (un documento)

TEXTO 2: Divorce (part 1)

Lea el texto y transcriba el 1er párrafo en español.

A marriage can terminate as a human relationship before it has been dissolved *by law*. Quite often the court rulings as to property and the custody of children will merely confirm arrangements that have already been made by the parties concerned. In the United States and Canada, 80 to 90 percent of divorce proceedings have been undefended; often the parties have made provisional arrangements about property, and one of them already has custody of the children. Before a union can be dissolved by divorce, there must have been a valid marriage. If a marriage has been imperfectly constituted *in law*, it may be annulled; grounds for annulment include lack of capacity, no reality of consent by the parties, a vitiating defect in the marriage ceremony, or the subsequent discovery of a defect such as inability to consummate the marriage. In old legal systems, marriage has been conceived as the transfer of a woman from the power of her family to that of her husband under terms usually specified in the marriage contract.

The standard method of dissolving a marriage if both parties were alive was repudiation, resulting usually in the return of the woman to the power of her family. Repudiation has had a considerable history. In Roman marriage law, unilateral repudiation at will was permitted, and this freedom existed for some time in the early Christian Era. The concern of the Roman law was for solemnity rather than grounds, and unilateral divorce was by a notification of repudiation before seven witnesses. At the other extreme from repudiation at will is the sacramental view of marriage that a marriage may not be dissolved during the joint lives of the spouses. Formerly, a Hindu marriage was indis-

soluble (except by caste custom) and might be eternal. Between the extremes of repudiation at will and indissoluble marriage, there have been various divorce formulas: divorce for fault, such as adultery, desertion, cruelty, or imprisonment; divorce on grounds analogous to frustration of contract, such as incurable insanity subsequent to the marriage or disappearance of the spouse; divorce by mutual agreement; and divorce on the ground that the marriage has broken down irretrievably. The variety of laws and attitudes with respect to divorce is bewildering.

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a. Falso o Verdadero. Justifique las oraciones flusas.

1. Only after a court ruling has been passed can a marriage be dissolved.
2. If a marriage is invalid, it may be annulled.
3. The concept of repudiation is fairly new.
4. Sacramental view and repudiation at will are related concepts.
5. Hindu marriages last forever nowadays.

b. Subraye las formas verbales perfectas en inglés que aparecen en el texto.

Semantic differences - Diferencias semánticas

¿Qué diferencias semánticas existen entre los siguientes conceptos?

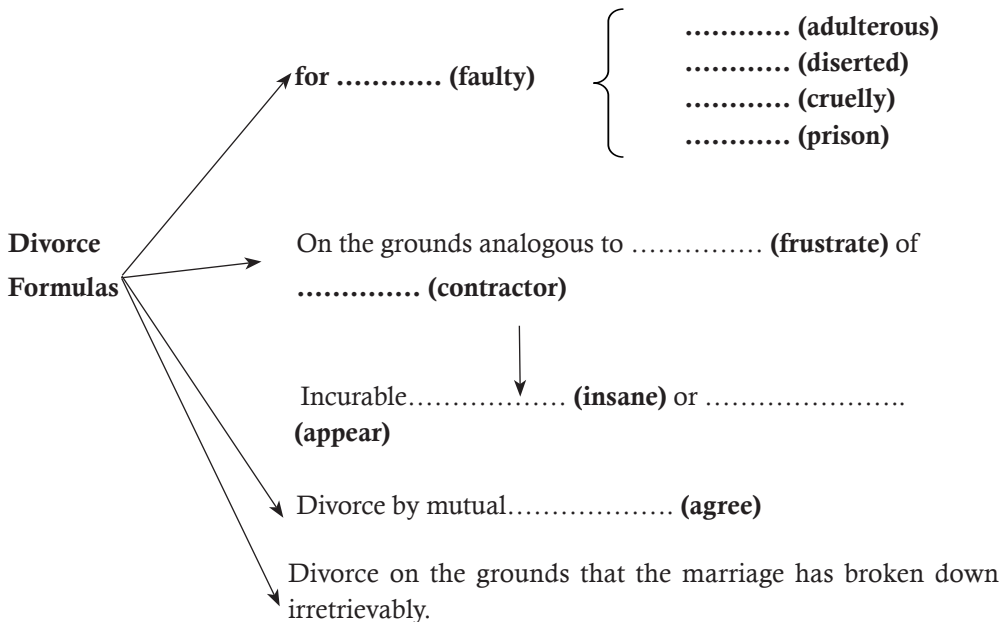
- *Union – Cohabitation – Marriage*
- *Annulment – Divorce – Repudiation*

Observe las líneas 1 y 7. En ellas encontramos combinaciones con la palabra “law”. ¿Qué diferencias existen entre estas 2 combinaciones?:

- *By law*:.....
- *In law*:.....

Conceptual map - Mapa conceptual

Complete el siguiente mapa conceptual buscando en el texto la derivación “sustantivo” de las palabras dadas y luego provea el significado de las mismas.



TEXTO 3: Adoption

Leer el texto y realice los ejercicios a continuación.

Adoption is the legal and emotional acceptance into a parent’s family of a child not born to the parent(s). The child will have the parents’ name and the same legal rights as a child by birth. After an adoption is approved by a court, the parents will receive an official decree and a birth certificate with the parents’ name listed as the parent. Each state has its own adoption law, though adoption might affect Federal Social Security law.

Equitable Adoption: Allowed in some states, equitable adoption is when a close relationship like that of parent and child exists between a child and an unrelated adult. Often, the adult had agreed or intended to adopt the child but had not done so officially. In equitable adoptions, the parent(s) must support the child and may be ordered to pay child support if the adult and child no longer live together.

Agency Adoption: An agency adoption utilizes a licensed agency, which links children in need of adoption to prospective parents. The adoption agency generally handles all the paperwork and may or may not supervise the care of the biological mother. These types of adoptions usually have very long waiting lists.

Private Adoption: Private adoptions are where the prospective parents actually adopt straight from the mother. Prospective parents actually seek out the mothers through doctors, attorney, word-of-mouth, or even advertising. This type of adoption is usually much quicker and less expensive than an agency adoption. Most states allow adoptive parents to pay the biological mother’s

medical expenses during pregnancy. But it is against the law to pay someone to give up her child.

Open Adoption: In an open adoption, the adoptive parents let the biological parent(s) have some contact with the child, such as through letters or periodic visits.

a. Seleccione la opción más apropiada.

1. An adopted child
 - i...will have the same rights as a birth child.
 - ii...will have different rights.
 - iii...Neither of them.

2. Equitable adoption is
 - i...permissible in all states and the parent has to support the child.
 - ii...permissible in all states and the parent doesn't have to support the child.
 - iii...permissible in a number of states and the parent has to support the child.

3. In an agency adoption,
 - i...the child and the soon-to-be parents are linked through an institution.
 - ii...the child and the biological parent are linked through an institution.
 - iii...neither of them.

4. In private adoption,
 - i...the prospective parents buy the foster child.
 - ii...are linked with the biological mother through an institution.
 - iii...neither of them.

b. Subraye los casos de *past perfect tenses* en el texto y traduzca las oraciones que contienen esa forma verbal.

TEXTO 4: Void and voidable marriages.

Leer el texto y realice los ejercicios a continuación.

A void marriage means that, as far as the law is concerned, no marriage has existed and the parties are in a single state. On the other hand, a voidable marriage is regarded as legally valid until a court of competent jurisdiction pronounces **it** a nullity. Marriages are void because of some defect **which** is so fundamental that it is considered the marriage never existed.

Voidable marriages are valid, but, because of certain circumstances after, or at the time of the wedding, **they** may be annulled by the courts:

1. Void marriages

The Nullity of Marriage Act 1971 provides that marriages shall be void for the reason that a valid marriage had not taken place because:

- (a) one or both of the parties
 - (i) were under 16 years old (see p. 260)
 - (ii) were within the prohibited degrees (see p. 260)
 - (iii) were already married (see above)
 - (iv) had entered a polygamous marriage whilst being domiciled in England or Wales (see p. 259)
- (b) there was a basic defect in the marriage ceremony (see p. 263).
- (c) the parties were not respectively male or female (see p. 259).

2. Voidable marriages

Section 2 of the Nullity of Marriage Act 1971, as consolidated in the Matrimonial Causes Act 1973, provides that marriages are voidable for the following reasons:

- (a) the marriage had not been consummated, owing to incapacity or the willful refusal to consummate, by either party. This means that one party was incapable of having sexual intercourse or refused to do so.
- (b) either party did not validly consent to the marriage because of duress, mistake, unsoundness of mind or otherwise. Parties to marriage must give their consent freely. Similarly, an insane person cannot give a valid consent because he does not know the consequences of what he is saying. This situation may also exist if one of the parties is drunk or under the influence of drugs.
- (c) either party was, at the time of the marriage, suffering from a mental disorder within the Mental Health Act 1983, which makes them unfitted for marriage.
- (d) one party was suffering from venereal disease in a communicable form and the other party did not know.
- (e) at the time of the marriage, the man did not know that the bride was pregnant by some person other than him.

It must be noted that children born of a voidable marriage are legitimate, even if the marriage is later declared void by the court, and children born of a void marriage are legitimate, if, at the time of conception (or the marriage, if later), the parties reasonably believed the marriage to be valid.

a. Lea la introducción del texto y diga a que hacen referencia las palabras a continuación.

- 1. *It*:
- 2. *Which*:
- 3. *They*:

b. Responder en español.

1. What is the difference between *void* and *voidable* marriages?
2. Why can a marriage be considered void?
3. On what grounds can a marriage be annulled?
4. Are children born under a void marriage legitimate? Why? Why not?

c. Extraiga tres ejemplos de voz pasiva y tradúzcalos.

d. Encuentre instancias de *perfect tenses* en el texto.

e. Identifique palabras que contengan sufijos y prefijos.

f. Traduzca el texto.

Contract

Definición de contrato: “*acuerdo legal entre dos o más partes con el fin de crear obligaciones legales entre ellos*”⁵.

La asignatura que se cursa en carreras de leyes en inglés se denomina: *Contract Law* o *Law of Contracts*.

Word Associations – Asociación de palabras

Observe detenidamente las asociaciones de palabras a continuación y busquen el diccionario sus significados con la ayuda de su instructor:

To draw up a contract

To draft a contract

To sign a contract

To void a contract

To award a contract to a company

To place a contract with a company

To tender a contract

⁵ *Dictionary of Law* (2000) Middlesex: Peter Collin Publishing. pág. 82.

To contract
To contract out of an agreement
A contract of service
Service contract
Exchange of contracts
Contract note
Breach of contract
Contract work
Contract killer
Contracting party
Contractor
By private contract
Under contract
There is a contract out for him/her
The contract is binding on both parties

TEXTO 5: Miscellaneous

- a. Lea e identifique las distintas combinaciones del verbo *TO BE* + Discuta los diferentes significados de esta forma con sus pares.**
- b. Lea el texto y provea un resumen.**

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

- Now it is quite possible for parties to come to an agreement by accepting a proposal with the result that the agreement concluded does not give rise to legal relations. The reason of this is that the parties do not intend that the agreement shall give rise to legal relations. This intention may be implied from the subject matter of the agreement but it may also be expressed by the parties. In social and family relations such an intention is readily implied, while in business matters, the opposite result would normally follow.
- “The parties were living together in amity. In such cases the domestic arrangements are ordinarily not intended to create legal relations. It is altogether different when parties are not living together in amity but are separated or are to separate. Then, they bargain keenly. They do not rely on honorable undertakings. They want everything cut and dried. It may be safely presumed that they are going to create legal relations”.
- Nearly a century and a half later, the principle was to be applied in *Butler Machine Tool Co. Ltd. v. Excel-o-corporation 1979*, a case where it was said in court, the documents amounted to a battle of forms. In brief, what had happened was that on 23rd May 1979 the sellers, Butler’s, quoted a price and delivery date on a machine tool. Their quotation contained various conditions in the small print including a price variation clause. Under

this clause the buyers were to pay the price actually prevailing at the date of the delivery, which, of course, could be higher than that mentioned in May.

Word Derivation – Derivación de palabras

Derive las palabras a continuación

NOUN	ADJECTIVE	ADVERB	VERB
	opposite		
	honorable		
variation			
	higher		
delivery			

Lea el texto 1 detenidamente y extraiga frases o palabras relacionadas con el área de “contratos” Luego, exprese sus significados en español.

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TEXTO 6: What is a Contract? What are the key elements of Binding a Contract?

http://law.freeadvice.com/general_practice/contract_law/contract_agreement.htm

Leer el texto y tradúzcalo.

A contract is an agreement between two or more persons (individuals, businesses, organizations or government agencies) to do, or to refrain from doing, a

particular thing in exchange for something of value. Contracts generally can be written, using formal or informal terms, or entirely verbal. If one side fails to live up to his/her/its part of the bargain, there's a "breach" and certain remedies for solving the differences are available. The terms of the contract - the who, what, where, when, and how of the agreement - define the binding promises of each party to the contract.



Competent Parties - For a contract to be valid, each side must have the capacity to enter into it. Most people and companies have sufficient legal competency. A drugged or mentally-impaired person has impaired capacity and chances are a court may not hold that person to the contract. Minors (e.g., usually those under eighteen) cannot, generally, enter into a binding contract without parental consent, unless it is for the necessities of life, such as food, clothing, or for student loan contracts.

Consideration - If the other side is to be held to the contract, you must give up something in exchange. This is called consideration. No side can have a free way out or the ability to obtain something of value without providing something in exchange. Money is the most common form of compensation, but it can also be property, giving up a right or valid claim, making a promise to do or not to do something, or anything of value. **Agreeing** to perform an illegal or illicit act is not consideration and the contract is void.

Mutual Assent or Meeting of the Minds - This means that each side must be clear as to the essential details, rights, and obligations of the contract. **Putting** the deal down on paper prior to signing it goes A LONG way to avoid future misunderstandings and disputes. **Meeting** of the minds sometimes can be expressed by words spoken or gestures made or can be inferred from the surrounding circumstances. There is no meeting of the minds if: (1) one side is obviously joking or bragging, (2) there is no actual agreement (i.e., the farmer who is selling a gelding and the buyer thinks the horse is a brood mare), or (3) both sides have made a material mistake as to the terms or details of the contract.

Prefixes and suffixes – Prefijos y sufijos

Lea el texto y extraiga palabras que contengan prefijos y sufijos. Luego agrúpelas y exprese el significado de las mismas en español.

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Defining words and phrases – Definir palabras y frases

Explique el significado de las siguientes frases:

- *Lawful agreement*
- *Mistaken belief*
- *Misunderstanding*
- *To do better out of the deal*
- *A keen but none-too-knowledgeable collector*
- *Negatives or nullifies consent.*

TEXTO 7: Duress and Undue Influence

Lea el texto y realice lo siguiente:

- a- Identificar casos de voz pasiva y estudiar las diferentes formas.**
- b- Definir los conceptos de *coacción e influencia indebida* en español.**
- c- Explicar qué ejemplo se da ejemplo de *Duress* y *Undue Influence*.**
- d- Haga coincidir una palabra de la columna A con una definición en la columna B.**

Where an individual is induced to enter into a contract by means of pressure brought to bear upon him so as to influence his own independent judgment, the courts will refuse to enforce that contract. In the extreme case of violence or threats of violence being offered ('sign here or be thumped') such pressure is described as **duress**; but it need by no means take so crude a form. The most subtle kind of improper pressure is that known as **undue influence** which equity recognizes as allowing the pressurized party to avoid the contract at his option. That influence may even be presumed to arise in a relationship such as that of parent and child, solicitor and client, doctor and patient.

Much of the case-law on this area has arisen out of proceedings brought by banks for possession of land upon which their lending has been secu-

red. In the Court of Appeal, Lord Denning M.R. rallied to the support of an elderly farmer when Lloyds Bank wanted his farm in order to clear his son's overdraft at the bank. In *Lloyds Bank v. Bundy* 1974 the father had mortgaged the farm to help out with his son's business. Although the bank obtained the advantage of this security for their loans to the son, they never advised the farmer to obtain independent advice. Such an omission proved fatal for their case and Lord Denning M.R. held that such cases rested on what he termed '**inequality of bargaining power**'. English law, he said, will give relief to one who, with independent advice, enters into a contract on terms which are very unfair or, where a man transfers property for a consideration which is grossly inadequate, when his bargain power is grossly impaired and undue influence or pressure is brought to bear on him by or for the benefit of another.

A	B
Enforce	Some right, interest, profit or benefit accruing to the one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.
Equity	A generic term for all kinds of benefits which an order or judgment of court can give a party to a lawsuit including money award, injunction, return of property, property title, alimony, and dozens of other possibilities.
Lending	A mutual agreement or contract between two parties which is voluntary and involves the exchange of consideration (money, goods, services, etc.)
Bargain	implement, to compel somebody to do something.
Mortgage	A loan.
Relief	A venerable group of rights to provide fairness, unhampered by the narrow strictures of the old common law or the other technical requirements of the law.
Consideration	In common law, a conveyance of, or granting of a lien upon real state property of a debtor to his creditor, intended as a security for the repayment of a loan, usually the purchase price of the property so conveyed.

Richard Bruce. (1994). *Success in Law. 4th edition*. London: John Murray Ltd.

Defining and explaining words/phrases – Definir y explicar palabras/frases

Busque en el diccionario el significado de “duress”

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Teniendo en cuenta el significado de “duress” explique el significado de las siguientes frases y oraciones.

- *Duress provides no defense to a charge of murder*
- *Under duress*
- *They alleged they had committed the crime under duress from another defendant*
- *He signed his confession under duress*

Busque en el diccionario el significado de “enforce”

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¿Cuál es el adjetivo y sustantivo que se derivan de “enforce”? Explique el significado de los mismos:

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Explique el significado de lo siguiente:

- *Enforcement of the terms of a contract*
- *Law enforcement*
- *Law enforcement officers*
- *Enforcement proceedings*
- *To enforce a law*

Capítulo VII

Selección de textos para práctica de lecto comprensión

I. The Law in the United Kingdom

United Kingdom

Main article: Legal education in the United Kingdom

In England and Wales, law can be studied as an undergraduate degree or in a Graduate Diploma in Law where students complete the Common Professional Examination. After obtaining the degree it is necessary to complete certain vocational courses and to serve a period of on the job training before one is able to qualify to practice as a barrister, legal executive, or solicitor.

England, Wales and Northern Ireland

Requirements for becoming a lawyer in England & Wales and Northern Ireland differ slightly depending on whether the individual plans to become a solicitor or barrister. All prospective lawyers must first however possess a qualifying law degree, or have completed a conversion course. A qualifying law degree in the England and Wales consists of seven modules drawn from the following subject areas:

- Public law (constitutional/administrative)
- European Union law
- Procedural Law (including law of evidence)
- Criminal law
- Law of obligations (contract, restitution, and tort)
- Property law (real property)
- Trusts and equity

Following graduation, the paths towards qualification as a solicitor or barrister diverge. Prospective solicitors must enroll with the Law Society of England and Wales as a student member and take a one-year course called the Legal Practice Course (LPC), usually followed by two years' apprenticeship, known as a training contract. Prospective barristers instead complete the one-year Bar Vocational Course (BVC), followed by a year training in a set of barristers' chambers, known as pupillage.

Main article: Legal education in the United States

The **Education of Lawyers** in the United States is generally undertaken through a law school program.

The professional degree granted by U.S. law schools is the Juris Doctor or Doctor of Jurisprudence (J.D.). Once a prospective lawyer has been awarded the J.D. (or other appropriate degree), he or she is usually required to pass a state bar examination in order to be licensed to practice as an Attorney at Law. Historically, as many as 32 states have recognized a diploma privilege method of bar admission which does not require sitting for a bar exam. As of mid-2007, Wisconsin and Vermont are the only states that continue to recognize this privilege.

The Doctor of Jurisprudence or Juris Doctor (J.D.), like the Doctor of Medicine (M.D.), is a professional doctorate. The Doctor of Juridical Science (J.S.D.), and Doctor of Comparative Law (D.C.L.), are research and academic-based doctorate level degrees. In the U.S. the Legum Doctor (LL.D.) is only awarded as an honorary degree.

Academic degrees for non-lawyers are available at the baccalaureate and master's level. A common baccalaureate level degree is a Bachelor of Science in Legal Studies (B.S.). Academic master's degrees in legal studies are available, such as the Master of Studies (M.S.), and the Master of Professional Studies (M.P.S.). Such a degree is not required to enter a J.D. program.

Foreign lawyers seeking to practice in the U.S., who do not have a Juris Doctor (J.D.), often seek to obtain a Master of Laws (LL.M.) [or other degrees similar to the LL.M., such as the Juris Master (J.M.), Master of Comparative Law (M.C.L.) and Master of Jurisprudence (M.J.)].

Legal education in the United States normally proceeds along the following route:

- Undergraduate education (usually 4 years)
- Law school (usually 3 years)
- Admission to the bar (usually by taking a state's bar exam)
- Legal practice

A number of law students apply for an optional judicial clerkship (less than 10% end up in such position), to be taken after law school and before legal practice. Some take the bar exam before a clerkship but this is not required, clerkships usually last one year with appellate courts, but trial level courts (including federal district court) are increasingly moving towards two-year clerkships.

Terminology

In practice, legal jurisdictions exercise their right to determine who is recognized as being a lawyer; as a result, the meaning of the term “lawyer” may vary from place to place.

- In Australia the word “lawyer” is used to refer to both barristers and solicitors (whether in private practice or practicing as corporate in-house counsel).
- In Canada, the word “lawyer” only refers to individuals who have been called to the bar or have qualified as civil law notaries in the province of Quebec. Common law lawyers in Canada may also be known as “barristers and solicitors”, but should not be referred to

as “attorneys”, since that term has a different meaning in Canadian usage. However, in Quebec, civil law advocates (or *avocats* in French) often call themselves “attorney” and sometimes “barrister and solicitor”.

- In England and Wales, “lawyer” is used loosely to refer to a broad variety of law-trained persons. It includes practitioners such as barristers, solicitors, legal executives and licensed conveyancers; and people who are involved with the law but do not practise it on behalf of individual clients, such as judges, court clerks, and drafters of legislation.
- In India, the term “lawyer” is often colloquially used, but the official term is “advocate” as prescribed under the Advocates Act, 1961.
- In Scotland, the word “lawyer” refers to a more specific group of legally trained people. It specifically includes advocates and solicitors. In a generic sense, it may also include judges and law-trained support staff.
- In the United States, the term generally refers to attorneys who may practice law; it is never used to refer to patent agents or paralegals.
- Other nations tend to have comparable terms for the analogous concept.

Taken from <http://en.wikipedia.org/wiki/Lawyers#Education>

II-American Law

American Law and Legal English Program (ALLEI)

The University of Delaware’s American Law and Legal Institute was established in 1998 to offer international legal professionals training in American law and legal English communication. This program benefits uniquely from the experience of the legal community of the State, particularly from the legal activity of the state’s Court of Chancery, an international center for corporate and commercial legal processes. Much of US corporate litigation takes place in Delaware, and the Delaware Bar Association includes some of the most highly regarded attorneys and judges in the United States, many of whom have served as ALLEI faculty over the years.

The four week ALLEI program includes 120 hours of instructional and professional activities, including courses, seminars, legal visitations and cultural activities. Dates and fees

Program course offerings (20 hours per week)

Courses are taught by experienced Delaware lawyers and center on topics in legal theory and practice. Program director and lead instructor, a University of Delaware teacher, is both a lawyer and an English as a Second language specialist. Courses taught include:

American Law Courses

- American Legal English
- The American Judicial System

- American Constitutional Law
- American Corporations and Business Ethics
- Contracts and Commercial Law
- Torts and Personal Injury Law
- International Transactions
- Tax and Investment Law

Legal English and Communication Courses

- Computerized legal research
- Contract and case analysis
- Legal vocabulary and writing
- Oral Advocacy

Legal Seminars and Workshops

Legal and judicial seminars and workshops are offered on campus and at various law firms and courts in Delaware and led by lawyers and judges from Delaware's legal community who are experts in their respective fields. Topics may include:

- International Trade and Business
- American & Multinational Corporations
- American Criminal Justice
- Banking and Insurance
- Product Liability and Personal Injury
- Alternate Dispute Resolution
- Securities Regulation

Judicial and Legal Visitations

ALLEI participants visit state and federal courts and major American Law firms in Delaware, New York and Washington DC, where they have the opportunities to meet American colleagues and make professional contacts.

Cultural Program and Activities

ALLEI offers a full calendar of cultural and recreational trips, such as day trips to historic Philadelphia, Baltimore, and the Amish country of Lancaster, Pennsylvania, and weekend excursions to Atlantic City's casinos, the Delaware beaches or Pennsylvania ski resorts, depending on the season. Professional visits include overnight trips to New York City and Washington, DC.

Program participants are housed on or near campus in resident halls, homestay families, or nearby hotels. Housing and Dining

Apply now

This program may be scheduled at most times throughout the year for a minimum of twelve participants in a group. Please see Dates and Fees for more information. We will be happy to design a program tailored to meet the needs of your participants.

III- Historical development of different legal systems

Introduction

The law of any system is based on legal tradition. Generally law changes very slowly. To study law without knowing something of its history is to study law in a vacuum. Indeed it is often argued that legal history and comparative law have close links. The history of a legal system also explains some of its characteristics and peculiarities and the study of the historical development or background of legal ideas is sometimes referred to as historical jurisprudence – a study which is not much in fashion nowadays. For example, in English law to understand why we talk of law and equity it is necessary to understand something about the development of the courts of chancery, the antagonism between the courts of chancery and the courts of common law and the final result of that. All legal systems in the world today have reached the present through a process of evolution. Some comparatists would argue that you cannot begin to use the comparative method unless you thoroughly understand the history of a particular legal system. It may not always be possible to have a thorough grasp of the history of a system let alone several systems, but it is helpful to have at least a general knowledge, because this will help your understanding of why a system is as it is today.

Historical Development of the major systems

In a narrow sense “legal systems” are the legal rules and institutions of a country. In a broader sense a “legal system” also includes a certain legal tradition or philosophy, as well as techniques or procedures. This means that legal systems can be defined very broadly or more narrowly into national legal systems. For example, the French legal system, is also part of the Civil Law System, the Australian legal system is part of the Common Law system, as is the American legal system. Within these national systems there are further legal systems, for example the political structure of a country may allow for different legal systems for different states or provinces, as in the United States of America, Australia and Switzerland. Legal systems may exist without political structures or only partially supported by political structures as in the case of Jewish law or Islamic law.

David & Brierley describe the “parent systems” as the major legal systems of the world, and include within this category the very broad legal families of “civil law”, “common Law” and “socialist law” a categorization approved of by J.H. Merryman in his book *The Civil Law Tradition* 1985. Today the family of socialist law might be replaced with Chinese communist law, as the great socialist legal system of the USSR has now

fragmented and in many cases been replaced by features of Civil law systems.

In this topic it is not intended to provide students with a thorough grounding of the legal history of all the major legal systems of the world but to provide a sufficient introduction for further study, and to highlight some salient features.

The Roman Legal System

Roman Law was certainly not the earliest legal system nor the most sophisticated. Nevertheless its influence was important because it was to affect many of the legal systems of the western world, and from the western world these legal systems spread to other parts of the world.

Roman Law itself can be divided into a number of categories. There is the Roman Law of the West or the Western Roman Empire, which had its capital in Rome, and the Roman law of the Byzantine or Eastern Roman Empire which had its capital in Constantinople. The terms classical Roman law, received Roman law and vulgar Roman law are also found. These terms reflect the changing historical and political influences in the Roman world.

The Roman influence starts in the West, building on the foundations of the Greeks. One of the earliest key dates is 450 B.C. when the Twelve Tables of Rome were written. One of the last most important dates is A.D. 529, the date of the publication of Justinian's *Corpus Iuris Civilis*.

Early jurists were men of education and political influence who discussed and wrote about legal problems. They advised litigating parties and magistrates and they also played a key role in the formulation of magisterial edicts which formed the body of formal law. Gradual the legal framework and the role of jurist became more formalized and they were absorbed into the imperial administration, advising the emperor and his council. Later the writings of jurists, who tended to comment by posing hypothetical problems and then answering them, were collected into Digests. The Western empire fell in 476 A.D. after a period of turmoil and political instability. It was not until the period of the Emperor Justinian (527-65) that the works of jurists emerged again. His *Corpus Iuris Civilis* consisted of four elements: a textbook for law students (the Institutes); a collection of juristic works (the Digest); a collection of imperial enactments (the Code) and Justinian's own enactments (the Novels). Justinian also reformed the curriculum for students of law who studied for five years, either at Constantinople or Beirut before becoming a judge or advocate.

While Justinian's law applied in Byzantium (the eastern empire), in the west a number of elements combined. Roman law had been extended to all free inhabitants of the Roman Empire (i.e. not slaves) in 212 A.D. However personality of law – i.e. law determined by personal status – also continued, as did local customary law, and the enactment of imperial legislation. To complicate matters further Christianity became the official religion from the early fifth century and with this the influence of ecclesiastical law and the structures of the church, became significant.

In 476 Rome fell to invading Germanic tribes – Ostrogoths, Visigoths and Franks – who were largely Christian and who also adopted various aspects of Roman law in their

codes of law, such as the Edict of Theodoric (c.460A.D.) and the Lex Romana Visigothorum (506 A.D.). The law of this period is sometimes called “vulgarized Roman law”, because it was adapted to suit the needs of the time and to reflect the mixed legal influences.

Towards the end of the sixth centuries further political changes effectively brought an end to this period of Roman law. The Arabs invaded much of Spain and southern France and the Germanic Lombards invaded most of Italy. It was not until 800 when Charlemagne – a Frank - became Emperor of the new Holy Roman Empire that a measure of unity and stability returned to this part of Europe.

(See the Germanic Legal system)

Reference: Robinson, Fergus and Gordon *An Introduction to European Legal History* Chapter One

IV. Historical Development of Legal Systems (part 2)

The Civil Law System

A Civil Law system is one which derives from the *ius civile* of Roman Law. That is the law of the state of Rome, or the law which applied to citizens of Rome – as opposed to citizens of the Roman Empire. It was therefore originally the name given to the law of a certain place. When interest in Roman Law revived in the eleventh century Justinian’s writings were referred to as the *Corpus Iuris Civilis* – the body of civil law – because his books were taken as an authoritative source of what the law should be. The teaching of law, including Roman and Canon law, Lombard and feudal law, was most evident in Italy, for example, in the universities of Ravenna, Bologna and Pavia . At this stage Civil Law meant the Roman Law re-discovered, and gradually re-interpreted. Scholars came from all over Europe to study and the common language of study was Latin. They returned to their own countries with the ideas generated by discussion of the Code Civil. Legal Systems which are regarded as Civil Law systems thus share a historical link. They are derived from the received Roman Law that is the Roman law of the twelfth century. It was “Romanistic” rather than “Roman”.

The pattern of Justinian’s Civil Code was to provide a model for the later codes and was seen as providing a core of rules for “civil law” that is private law : the law of persons, family, property , torts, inheritance, unjust enrichment contracts and remedies.

As the identity of nation-state emerged in the fifteenth century the idea of a common law of Europe was less attractive. There was also a revival of interest in customary law of the law of the region. Nevertheless by that time Roman law had permeated much of Western Europe.

Another aspect of Civil Law was the law of the Roman Catholic Church. The church had its own system of law and its own courts although in some areas the jurisdiction overlapped, for example in cases of succession or family law and even sometimes land law as the church owned vast tracts of land. Canon law crossed all national boundaries and shared many aspects of Roman law. It was taught alongside civil law in the universities.

Another influential force was commercial or mercantile law, the law of trade. This also originated in Italy and spread throughout the Mediterranean. This system of law was

practical and geared to the needs of merchants from Venice, Pisa, Genoa and the great trading ports. Commercial courts emerged as separate entities with merchants sitting as judges. Commercial law was soon international and spread easily becoming incorporated eventually into commercial codes.

Although the Civil Law became the common law of much of Europe – that is it was applied in a number of countries, especially where local law was insufficient, unclear or in dispute – it never really became part of the Common law of England. It crept in slightly into ecclesiastical or church law through Catholicism, but England was not swept up in the revival of Roman Law. (See English Common law system)

From the nineteenth century on Civil Law was also used to describe systems of law which had certain important sources of law, namely Codes. Napoleon's Civil Code of 1804 (*Code Civil*) was the first great code – there had been other codes of law even in England, but none so radical or broad. The new codes replaced the old Roman law and marked a new era in Civil Law systems. Roman law reverted to being a study of classical Roman law – i.e. the law as it really had been before being glossed and commented upon or changed to meet 12th-14th century needs. In any case the influence of Roman law had been only partial, being strongest in areas of law most influenced by academic and practicing lawyers, such as contract, property and later tort, whereas family law had been largely determined by custom and administrative law by local legislation. The new codes also gave a new meaning to the term Civil Law, because they were primarily concerned with private law, especially the Code Civil. Civil Law thus came to signify private law. It also signified a system of law which was written, complete and universally applicable

The Napoleonic Codes, along with Napoleon's military campaigns spread into much of Europe taking this system to Belgium, the Netherlands, Italy and Spain. From Spain it spread to Spain's colonies in South America. Later colonization and empire building took codified law to Quebec in Canada and Louisiana in what is now the United States of America – although it was far from united at the time that French law crept into Louisiana. Indeed civil law dominated legal tradition over most of Western Europe, parts of Asia and Africa and the pre-socialist eastern bloc including what was to become socialist Russia.

Civil law has also been an important influence in international law - and one of the aims of early comparativists was to work towards the establishment of international legal frameworks - and certainly the law of the European Community.

Reference: Merryman, *The Civil Law Tradition*, Chapter Two

The Germanic legal system

Early Germanic people moved across large areas of Europe. They took their personal law with them, most of which was oral customary law. The influence of these people on the development of law in Europe was evident in the fifth century as they moved south west into what had been the Roman Empire which fell to Germanic people in the west in 476. These people were from different tribes, for example Burgundians and Salic Franks. Their legal systems co-existed alongside Roman law. Certain customs were written down

in codes – such as the customs of the Visigoths in the *Codex Euricianus* 480 AD, the Salic laws in the *Lex Salica* 482-511 and the Ostrogoth customs in the *Edictum Theodorici*. Codes of Roman law and Gallo-Roman law were also made and Roman law was influential procedurally while the law of the church – which was primarily Roman – was also influential especially in the education of lawyers.

Under Charlemagne who established the Holy Roman Empire in AD800 there were attempts to unify the Germanic people under one legal system held together by imperial edicts. This failed and the empire fragmented into three parts in 843 with increasing focus on regional and personal law. Law making moved from the assemblies of the people to feudal lords. In 911 one third of the former empire, East Franconia or Germania, was re-established as the holy Roman Empire and through the next few centuries grew into the German nation. It was not however a unified country and the administration of law was not centralized, with regional, often unwritten law being the most important. Customary law was established by law-finders and as people became more settled in regions the principle of personality of laws gave way to localization of laws. Commercial law, focussed in the urban areas developed separately with its own specialized courts and arbitrators.

From the 13th century there was a revived interest in Roman law and attempts to codify some of the regional customary law, notably in the *Sachsenspiegel*. However, the variety of customary law and the continuing political fragmentation of the country led to an increasing interest in Roman law as glossed by the glossators and commented on by the commentators of the universities from the twelfth century. This Roman law was used to fill the gaps in German law on a piecemeal basis first under the influence of canon law – the church was the one unifying aspect of the Germanic people – and the law of procedure, and secondly via the Roman law which had been left in place as the personal law of the Italian inhabitants of the Holy Roman Empire, and which was seen by successive emperors as providing a fitting basis for imperial enactments. German universities established in the sixteenth century also followed the Italian universities in the study of Roman Law, first as canon law for clerics but later as law for lawyers. Roman law began to be adopted throughout Germany, being seen as superior to unwritten customary law. Also Roman law provided a model - procedurally and conceptually it offered a unified system. It was also, thanks to the work of the commentators, adaptable to a changing world, while customary law was seen as being less flexible, particularly in trade and in the conflict of laws within the country between the different personal and later regional laws.

Centralised courts were gradually established, first the Imperial Court of Appeal in 1495 – which was largely ineffective – and then lower regional courts which were expected to follow the Court of Appeal. These latter were staffed by university trained judges. Competition with the ecclesiastical courts led to a strengthening of these secular courts and a corresponding increase in reference to Roman law. The law-finders of the local courts were gradually replaced with university trained lawyers and judges. The status of university law professors, their rights of appearance and the value placed on legal theory and academic opinion remain features of the German legal system along with a professional judiciary and long legal training. From the universities emerged the publication of decisions and

doctrine which was largely Roman law but included aspects of customary law. This was the *Usus Modernus Pandectarum* and represented modernized and applied Roman law. By the seventeenth century the process of the reception of Roman law was virtually complete.

The Holy Roman Empire was dissolved in 1815 and a Confederation of German States established. The rise in separate states, some of which were very strong, led to decentralization. Those states which had come under Napoleon's control retained French law, and the idea of codification began. However it would be some time before it could become a reality. The school of natural law favoured in the universities had already led to some codes, notably the Prussian Code of 1714-1794 and the Bavarian Code of 1756 but these related to single states. Until a unified German state could be achieved a single code was impossible to achieve. Commercial pressure eventually led to the General Commercial Code of 1861 and the Bills of Exchange Act of 1848. The rise of German nationalism under Bismarck led to the establishment of the second Reich in 1871 in which the northern and southern states of Germany combined. The political structure was two tier, with a unified assembly in the Reichstag – the First Assembly – and states having the second assembly – the Bundesrat. A number of specialised codes were passed at this time such as the Penal Code, the Code of Civil Procedure and laws for the organization of the courts and the legal profession. The Courts Act of 1879 created a decentralized system of courts with a hierarchical system of appeal to the central courts. Work on the Civil Code began in 1874 and was completed in 1900.

German Law is in some ways a Civil Law system. However nearly a century separated the French Civil Code from that of Germany and in that period German law developed along separate paths. In Germany, because of its fragmented political structure until the start of the twentieth century, customary law and local law remained very important.

Reference: Foster N, *German Legal System and Laws*, p. 1-30

V. Historical Development of Legal systems (part 3)

The Common Law system

It could be claimed that the Common Law did not start until 1066, when William Duke of Normandy, defeated the King of England Harold 1 at the Battle of Hastings, and became William 1 – or William the Conqueror, of England. This date is of course considerably later than Roman Law but around the same time as the re-discovery and revived interest in Roman law inspired by the study of Justinian's writings.

The Romans left Britain in the early fifth century and for sometime afterwards the country was fragmented until brought under Anglo-Saxon rule in the early years of the seventh century. However even by the end of King Alfred's reign in 899 half of England was still under Danish rule and subject to threats from the Norse and Celts. Dane law applied in the east and the customs of Wessex in the land ruled by the king.

A form of feudalism existed and in the tenth century an administrative structure which divided the country into shires and hundreds. There were shire courts, borough

courts and courts of the hundreds. Shire courts were chaired by earls (ealdormen) and local bishop and dealt with lay and religious matters. The Earl's deputy was the reeve or sheriff, and the sheriff represented the king. The shire courts met twice a year. The borough courts three times, and the court of the hundred once a month. The king was the last resort in the system and he sat with his council (the witan). The most minor court was the hall-moot or manor court.

Trial was often by ordeal and a defender would seek the help of oath-helpers to swear his innocence. The accuser would similarly be assisted. This process was called "compurgation". Trial by jury and the use of writs was already known before 1066, as was the circuit court of the sheriff who had to move around the shire.

There was therefore not only a court structure in place but also considerably conformity of custom even between Anglo-Saxon law and Dane law. The influence of the church had also been felt and William took the crown with the support of the church.

William established a centralized system of courts and a national system of justice. Local courts still remained and dealt with a number of local matters as did the ecclesiastical courts which dealt with matters relating to the family and spiritual matters. The "common law" of England came to mean the law which applied to everyone – England of course did not include Wales, Scotland or Ireland, which remained for a long time outside the control of the English monarch.

The witan or King's council was replaced with the *Curia Regis* which functioned as a court. The shire courts became less important and were replaced by honour courts. The Normans introduced trial by battle for civil and criminal matters, and civil and ecclesiastical matters and roles became separated.

The court of the Exchequer was established under Henry 1 (1100-35) and a collection of written laws the *Leges Henrici* were made. Under Henry 11 juries of twelve men developed and also the specialisation of royal justices in the courts. This saw the development of the Court of Common pleas – litigation between ordinary people. As the work of the eyres increased they were sub-divided into different courts with separate civil and criminal jurisdiction. Although eyres disappeared in the fourteenth century, circuit courts remained for the next 800 years, while the continuing use of the jury influenced the development of forms of pleading, and the distinction between questions of law and those of fact.

Throughout the period from the twelfth to nineteenth century the use of the writ for initiating an action was fundamental and despite restrictions imposed in 1285 under the Statute of Westminster – which prohibited the creation of new writs – the number of writs continued to grow.

In the thirteenth century centralisation of the courts became significant and in particular the specialisation and development of the courts of the *Curia Regis*. The Exchequer was the first court to become permanently settled in Westminster (London). It was followed by the Court of Common Pleas and by the end of the fourteenth century by the Court of the King's Bench. The King's Council became distinct from the King's Bench and as Parliament heard petitions from senior and important people of the realm, lay and church. Gradually only the most important cases were heard by Parliament and by

the end of the 14th century lesser matters were delegated to individual council members such as the Chancellor or the Admiral from which developed the Court of the Lord High Admiral (abolished in 1970) and the Court of Chancery. Actions were by way of petition. By the 15th century the Court of Chancery had a staff of 120 and the most senior member of staff was called the Master of the Rolls. The Court of Chancery dealt with feudal matters involving the King and petitions or individual bills of complaint (or plaint). Later courts were the Court of the Star Chamber – established in 1540, and the Privy Council. The Court of the Star Chamber was abolished in 1641, but the Privy Council remains.

Common law was the law of the Court of Common Pleas, the Kings Bench and the Exchequer, and its greatest development was between the 13th and 16th centuries. By the 14th century English common law had emerged as clearly distinct. It was law as practiced. Its lawyers and judges were trained within the courts and at the Inns of Court, not at universities. Gradually clerics were excluded from the administration of justice – except for the ecclesiastical courts – and by 1342 no clerics sat on the King's Bench. The language of the courts was French, although Latin was used in written documents. Academic writing had little influence in English law. There had been two major writers in the 12th century, Glanvill and Bracton, but apart from the year books little was evident in the way of jurisprudence or legal philosophy until the seventeenth century, despite chairs of civil law being established by Henry VIII at Oxford and Cambridge. Although there had been writers such as Seldon (1584-1654), Hale (1609-76), and Coke (1552-1634) William Blackstone and his Commentaries on the Laws of England was probably the most influential early writer on English Common Law (1723-80) and was to be of particular relevance in the development of American common law.

Early courts remained, such as the manor courts, the shire courts and the borough courts. The latter increasingly came under the control of Justices of the Peace and their jurisdiction grew, eventually they became the magistrate and county courts. Assize courts still visited the shires twice a year and the King's Bench occasionally went on circuit, but quarter sessions and petty sessions before justices of the peace represented the bulk of local court work.

The idea of appeal courts came very late. It was not until 1851 that a Court of Appeal in Chancery was created. This was partly because the common law was the law of the king, the justices were the king's men so could not have made a wrong decision. To challenge the finding of a judge was like challenging the king.

English law was ruled by forms of procedure – the forms of action – which created very rigid formula for bringing a case within the jurisdiction of the court. The focus was on remedies not rights. It was therefore procedural rather than substantive and framed in terms of actions and remedies. The law evolved through individual cases and not general rules – these came later. The doctrine of precedent did not become established until the nineteenth century although weight began to be given to previous decisions around the sixteenth century.

It was certainly not a written law, and indeed there is the view in English law that legislation intrudes on the role of the courts, although of course legislation is of increasing importance. There is still the presumption that legislation does not repeal the common law – here the law formulated through case-decisions – unless it does so expressly.

The difference of approach is evident in the way in which courts interpret legislation. Generally English courts are restrictive in their interpretation, the first rule being to give words their ordinary meaning. Civil lawyers will adopt a rather more liberal approach and look at legislation quite creatively.

The historical development of the law also explains aspects such as the adversarial system, the training of lawyers and judges, the role of the Inns of Court, the role of universities and academics, and the approach to sources of law.

Reference: Robinson, Fergus and Gordon, *An Introduction to European Legal History*, Chpt 8.

VI. Capacity

a. Read the following text and answer the questions below:

- 1- How is a person under the age of 18 considered by the law?
- 2- What is the difference between a *voidable* and a *void* contract?
- 3- What do you understand by capacity?

b. Say whether these statements are true or false. If false, correct them.

- 1) An infant has unlimited time to repudiate an obligation.
- 2) According to the Infants' Act Relief, all obligations undertaken by infants are to be considered void.
- 3) The conditions mentioned above do not apply if a minor lies about his age.

c. Identify the "If" sentences in the text below.

Anyone under eighteen who has tried to buy a car, open a bank account, or obtain any form of credit will almost certainly have found it a difficult business. This is because any person under eighteen is in law an infant or a minor, and, as such, is protected by the law against himself and his inexperience. In terms of the law of contract, he does not yet enjoy full capacity. Some contracts made by infants can, however, be binding; some will be void and others voidable. A contract which is void is one which is treated by the law as never having existed: it follows that neither side has acquired any rights or liabilities under it. A contract which is voidable is something less insubstantial. It means a contract from which one or other of the parties can choose to Withdraw but which is otherwise binding; in the context of contracts made by Infants it means an agreement that will develop into a binding contract after a reasonable time unless the minor has taken steps to repudiate (avoid) the contract either before his eighteenth birthday or shortly afterwards.

As Lord Watson explained in *Edwards v. Carter* 1893, when the House of Lords held four Years to be too long a delay to allow repudiation:

"The law gives this minor the privilege of repudiating the obligations which he had undertaken during his minority within a reasonable time after he comes of age. It laid not

obligations him - it merely conferred upon him a privilege of which he might or might not avail himself, as he chose. If he chooses to be inactive, his opportunity passes away; if he chooses to be active the law comes to his assistance.”

For example, the lease of a flat is binding upon an infant (which means he will have to pay the rent for the period he agreed to take the flat) unless he repudiates it within a reasonable time after attaining his majority.

Just over a hundred years ago Parliament intervened to protect passing the Infants’ Relief Act 1874. Section 1 of that Act provides that

“... All contracts entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries) and all accounts stated with infants, shall be absolutely void.”

This means that if a seventeen-year-old buys goods (or borrows money to buy those goods) which he does not really need, the law will treat that contract as never having been made. This will be so even where the infant has lied about his age. For instance, the infant defendant lied about his age to the plaintiffs who were moneylenders, and in this way the moneylenders were fraudulently induced to advance him £400. When the money lenders wanted their pound of flesh the infant refused and, when sued, raised the defense of infancy. The Court of Appeal upheld the infant’s defense saying ‘that there was no liability on the defendant to repay the money.

Richard Bruce. (1994). *Success in Law. 4th edition*. London: John Murray Ltd.

VII. The 200th Anniversary of Marbury V. Madison: The Reasons We Should Still Care About the Decision, and The Lingering Questions It Left Behind

By Joel B. Grossman
Monday, Feb. 24, 2003

Today, February 24th, 2003, marks the 200th anniversary of an extraordinary legal event: the Supreme Court’s decision in the case of *Marbury v. Madison*. There, the Court - in an opinion authored by Chief Justice John Marshall - ruled that it was not bound by an act of Congress that was “repugnant to the Constitution.”

William Rehnquist has described *Marbury* as “the most famous case ever decided by the United States Supreme Court.” But, at the time it was issued, neither Marshall nor his chief adversary (and cousin), Thomas Jefferson, could have imagined the further growth and acceptance of the power of judicial review that *Marbury* declared.

Nor could Marshall and Jefferson have conceived of the extent to which *Marbury* would become the poster child of the American legal system. The Supreme Court had actually declared an act of Congress unconstitutional in 1794. But no opinions were announced in that case, and thus it remained for Marshall to seize the opportunity in *Marbury* to provide a rationale for judicial review.

But why should we still care about this decision?

Marbury's Context: A Feud Between Political Factions

The formal dispute that the case resolved was itself of minor significance. It was an issue of political patronage, pitting the ascendant Jeffersonians against the (soon-to-be) departing Federalists. The simmering feud between them was intense. The case can only be understood against the background of the election of 1800, in which Thomas Jefferson defeated the incumbent president, John Adams, and his Democrat-Republican party also gained control of the Congress.

In those days, there was a long lame duck period between the November election and the inauguration of a new president. And the Congress that met in December 1800 was the old Congress. So the Federalists still controlled the government until March 4, 1801. Adams appointed John Marshall as Secretary of State, and then appointed him also as Chief Justice of the United States when that position became vacant. The Federalist-dominated Congress passed the Judiciary Act of 1801, which created circuit courts of appeal much like they are today, and relieved the justices of the Supreme Court of their obligation to “ride circuit.” It also increased the jurisdiction of the federal courts. Adams immediately appointed 16 new judges to these courts--all Federalists--and all were confirmed by the Senate.

On February 27, 1801, just days before Jefferson was to take office, Congress passed another bill. The Justice of the Peace Act provided Adams with the opportunity to appoint 42 justices of the peace to five-year terms in Washington and Alexandria. Most of Adams’s nominations went to deserving Federalists, and all were confirmed by the Senate. William Marbury was one of those appointed.

The judicial commissions were signed by Adams, and the seal of the United States affixed, on March 3rd. These were known as the “Midnight Judges.” John Marshall, as Secretary of State, was responsible for delivering the commissions. Historians differ on whether none or some of the commissions were delivered. But of those not delivered, one belonged to Marbury. Jefferson ordered his Secretary of State, James Madison, not to deliver the commissions, although eventually some were (but not Marbury’s).

Marbury, born in Maryland on a tobacco plantation, had achieved great success as a financier, with strong ties to the Federalists, and he had become quite prominent in Washington. Marbury and several others brought a lawsuit to compel Madison to deliver their commissions. They asked the Supreme Court, in its original jurisdiction, to issue a writ of “mandamus” -- a court order directing Madison (but really Jefferson) to carry out his lawful and non-discretionary duty to deliver the commissions. Thus the name of the case, *William Marbury, et al. v. James Madison*.

Marbury's Initial Quiescence

Marshall never declared another act of Congress unconstitutional. Indeed, *Marbury* lay fallow for most of the 19th century.

It was not until 1857 that the Supreme Court again invalidated an act of Congress. In the notorious *Dred Scott* case, Chief Justice Roger B. Taney invalidated the Missouri

Compromise of 1820, inflaming the slavery issue beyond repair. His decision denying that Congress could end slavery in the territories also damaged the Supreme Court's reputation, and threatened the continued viability of judicial review.

The opinion did not even mention the *Marbury* case, which was not cited as an authority for judicial review until 1887. And not until 1895 was it employed in actually striking down an act of Congress. As of the end of 2002, the Supreme Court had struck down 158 provisions of federal statutes. (Eleven of those came in the years 2000-2002 alone! The Rehnquist Court, it turns out, is far more activist in this regard than the Warren Court ever was.)

Marbury's Profound and Lasting - If Delayed - Impact

Virtually all constitutional law courses in America's colleges and law schools begin with the *Marbury* case. And there are good reasons for this. With the possible exception of the Supreme Court's 1819 decision in *McCulloch v. Maryland* - which held that Congress had broad "implied" powers under Art. I, Sec. 8, Clause 18 (the "Necessary and Proper" clause), and is generally considered to be the foundation of the modern state - no other case from this period offers so much.

Despite its archaic language, *Marbury* comes alive for students. They respond to its intrigue and machinations, to Marshall's epic confrontation with Jefferson, to his disputed rationale for recognition of the power of judicial review, and his skillful manipulation of institutional strength and weakness. In all of these, they recognize the blueprint of a hybrid legal/political Supreme Court in the making. The full realization of *Marbury*, thus, is largely a product of the 20th century.

Marbury's visibility and influence now extends far beyond America's borders. It has been an inspiration and a model for many of the world's constitutions - particularly those created or redrafted after World War II, and then after the demise of the Soviet bloc.

Marbury is cited worldwide as an authority on a host of fundamental questions relevant to any country with a constitution and courts: What should the role of constitutional courts be? What should the shape and extent of judicial review be? What are the limits of judicial activism? Why are checks and balances, and the idea of limited government, essential to constitutional government? How can, and why should, a country commit itself to constitutional rule and the rule of law?

Meanwhile, with respect to the U.S.'s own law and history, there are several "issues" relating to the *Marbury* case, and John Marshall's rationale for assumption of the power of judicial review, that deserve continued reflection and debate.

Issue #1: The Origins of the *Marbury* Case and the Legitimacy of Judicial Review

Although judicial review seems to have survived the test of history, its origins remain troublesome. To understand why, some explanation of the relevant facts of the case is in order.

The decision was based on Marshall's interpretation of two documents: Section 13 of the Judiciary Act of 1789 ("Section 13"), and portions of Article III of the Constitution

- which defines the powers of the federal judiciary. Among other provisions, Article III defines the Supreme Court's "original jurisdiction" - that is, the few types of cases that can be brought directly to the Supreme Court. These are "cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be party."

In all other cases, Article III makes clear, the Supreme Court has only appellate jurisdiction. Article III also says that the Court's appellate jurisdiction is subject to "such Exceptions and... Regulations as the Congress shall make." No such provision is made with respect to the Court's original jurisdiction. The Constitution thus implicitly suggests that, in contrast, the Court's original jurisdiction is not subject to congressional regulation.

All of this legal detail is by way of introduction to the dilemma that John Marshall faced in *Marbury*. The fundamental question was, did the Supreme Court have the jurisdiction (for example, the constitutional authority) to issue the writ of "mandamus" that Marbury sought?

Marshall argued that in Section 13, Congress had improperly attempted to add to the Court's original jurisdiction, as Article III implied Congress could never do. Congress did so, according to Marshall, by conferring on the Supreme Court power to issue a writ of mandamus - that is, an order compelling an official to carry out a non-discretionary ("ministerial") act.

But there are numerous problems with this argument - as should be clear if one reflects that the Constitution and Section 13 shared the same drafters, and were not meant to conflict, but to be entirely consistent with each other.

First, Article III appears to prohibit Congress from making "exceptions" (that is, subtractions from), or "regulations" of the Court's original jurisdiction. Yet it never says Congress cannot add to that jurisdiction.

Second, in what sense does the power to issue a writ of mandamus that Section 13 granted actually add to the Court's jurisdiction at all? A writ of mandamus is not a new type of case. And jurisdiction, according to Article III as well as the common understanding of the term, has to do with types of cases (or parties), not mechanisms of judicial power.

Marshall could easily have assumed that Section 13 merely gave the Supreme Court the power to issue a writ of mandamus in cases in which it already had jurisdiction. But Marshall understood that otherwise the Court had no authority to hear *Marbury's* case in its original jurisdiction (Marbury was obviously not an "ambassador, public minister or Consul). This would have removed the opportunity for him to proclaim the power of judicial review because Congress would not then have acted unconstitutionally.

Thus, Marshall was able to hold that Marbury was entitled to his commission, and that the Jeffersonians were wrongfully denying him his judgeship, while at the same time claiming he was unable to order Madison to deliver the commission (an order which Jefferson almost certainly would have directed Madison to disobey), and acquire the vastly more important power of judicial review. It was, for Marshall and the Supreme Court as an institution, a great bargain!

At the same time as he was interpreting the Constitution both narrowly (holding that Section 13 was unconstitutional) and broadly (that even though it was not mentioned

specifically, judicial review was implied by Article III), Marshall was establishing an important duality: although the Constitution was “higher law,” paramount to all other law, and not to be easily amended, it could nevertheless be interpreted and molded to achieve important societal and institutional goals.

Marshall would express this idea even better in *McCulloch*, where he wrote that “this is a constitution intended to endure for ages to come,” and that it is “a constitution we are expounding.” His language suggested that built into the Constitution was a flexibility that would guarantee that it would indeed “endure,” rather than breaking of its own rigidity.

Issue #2: Why Did Marbury Choose to Invoke the Supreme Court’s Original Jurisdiction- and Then Not Bring His Case to a Lower Court Where He Surely Would Have Won?

Another mystery of *Marbury* is this one: the Supreme Court, as we have seen, denied *Marbury* and the other plaintiffs the remedy they sought, even though they were properly “entitled” to it. The Court refused to grant the writ of mandamus on the ground that Section 13, which had conferred that power on the Court, was unconstitutional. But the plaintiffs were not at a loss. They had another option. but didn’t use it. Why?

After losing in the Supreme Court the plaintiffs could have applied to the Circuit Court of the District of Columbia for the writ of mandamus that would have gotten them their commissions. The D.C. Circuit clearly had the power to issue the writ. So why didn’t the plaintiffs go there? (And for that matter, why didn’t they go to the D.C. Circuit Court first, before going to the Supreme Court?).

Georgetown Law professor Susan Low Bloch has recently offered an explanation to solve this mystery. She suggests that perhaps the plaintiffs really weren’t interested in the commissions. After all, they were to a low level court, and expired in only three years.

(Indeed, it is not even clear that Marshall was correct when he implied that Jefferson had deprived Marbury of his commission by not delivering it to him. Marshall himself said that when the commission was signed and sealed correctly; Marbury was entitled to it. Why was the delivery of the commission even necessary? Why then didn’t Marbury just assume his new role as a justice of the peace?)

Why, therefore, did the plaintiffs seek the writ of mandamus in the Supreme Court? It appears that this may have been part of a plan by radical Federalists to compel Chief Justice Marshall to escalate the political conflict with the Jeffersonians. The “High” Federalists apparently hoped that Marshall would issue the commissions, and thus further aggravate conflict between the parties when Jefferson prevented their delivery.

But Marshall, despite his critics, was more of a centrist than a radical Federalist. And so he sought to avoid, not precipitate, a confrontation with Jefferson.

Marshall knew full well that Jefferson would not permit delivery of the commissions. So he wrote an opinion for the Court that did not order Jefferson to do so. But at the same time, Marshall used the opportunity to claim the more important power of judicial review. Circumstantial evidence thus suggests that even if he played no role in devising Marbury’s strategy, Marshall must have been aware of it.

Issue #3: Should the Judiciary Have a Monopoly on Constitutional Interpretation?

Was Marshall right when he suggested in *Marbury* that judicial review - testing statutes against the Constitution - is an exclusive power of the Supreme Court?

Certainly Marshall made a strong argument for judicial review as a power of the Supreme Court. But his argument for exclusive “monopoly” power is weak at best. He argued that “it is, emphatically, the province and duty of the judicial department, to say what the law is.” But while he establishes fidelity to the Constitution as the judiciary’s duty, he does not necessarily demonstrate that it is only the judiciary’s province - as opposed to the province of all three branches of government. For example, Marshall notes that in a written constitution of enumerated powers, the constitution is superior to ordinary law. But his deductive argument that this implies exclusive judicial review is not compelling.

Marshall noted that the judges take an oath to honor the Constitution. But he neglected to say that so do members of the other branches of government, and therefore they are equally bound to act constitutionally. Why is the judgment of constitutionality the Court’s job alone?

These are good questions, but Marshall’s view, whatever its logical and historical shortcomings, has endured. That’s because judicial review has worked reasonably well, and no one has come up with a better idea. Alternate theories, for example, that each branch may interpret the Constitution’s meaning for itself, or that the first branch to interpret a provision of the Constitution prevails, have never commanded much support.

To say that the Supreme Court has designated itself as the final arbiter of the Constitution’s meaning, is not to say that the Court is “all-powerful.” It dodges some questions on the ground that they are too “political” and should be decided by the other branches. And as Louis Fisher and others have noted, the Court’s judgments are not always final, or obeyed. Talk about “judicial supremacy” thus is usually more rhetorical than real.

There are other gaps in the Court’s alleged control of constitutional meaning. For example, there are many issues about which the Constitution is “silent,” or where the Court has simply not spoken. These include, for example, the grounds for impeaching a president (what are “high crimes and misdemeanors?”), whether a president can pardon himself, and the extent of the president’s “war powers.” These constitutional issues, and others like them, are governed by what might be called “constitutional understandings”-- norms that prevail by agreement or circumstance unless and until the Court addresses them.

For all these reasons, while the Supreme Court is certainly no longer the “least dangerous branch” that Alexander Hamilton described in *Federalist 78*, it is also not all powerful, nor always “supreme in its exposition of the constitution.”

Issue # 4: How much Judicial Review was Marshall Claiming? How Should the Constitution be Interpreted?

How much judicial review was Marshall claiming? Not an easy question when the Constitution does not even mention such a power. Technically, one could describe the

outcome in *Marbury* as a “defensive” maneuver--the Court claiming only enough power to protect itself from powers improperly conferred on it by Congress--and thus only a modest and limited charter of judicial review, under which each branch could protect itself from the unconstitutional actions of the other branches. And one can certainly see in Marshall’s opinion concerns about the consequences of judicial overreaching.

But most of the language of Marshall’s opinion is couched in broader terms. There is here (as in some others of Marshall’s opinions) a strategic ambiguity, designed to avoid controversial issues or future entanglements. Perhaps the opinion is better described as passive-aggressive rather than merely defensive.

In today’s debates over how to interpret the Constitution, Marshall’s opinion in *Marbury* would certainly place him in the “interpretivist” category of “non-originalist” judges who reject the claim that the Constitution means only exactly what it says, or its framers clearly intended. Marshall was at least arguably the first judicial activist (though the fourth chief justice).

It would be difficult to find a better primer of judicial activism than the *Marbury* opinion. Indeed, in his originalist treatise, The Tempting of America, Robert Bork conceded that *Marbury* was an activist opinion that epitomized a “loose construction” of the Constitution, but embraced the decision nonetheless because it had produced a good result. Even originalism can be flexible when necessary!

Issue #5: Judicial Review and Democracy

Finally, and perhaps most important, there is the issue of the compatibility of judicial review with principles of democracy. Robert McCloskey once observed, sagely, that there is an inescapable tension between the rule of law and popular sovereignty. Today the implications of that dilemma are debated in the framework of Alexander Bickel’s contention that judicial review poses a “countermajoritarian difficulty.”

Bickel argued that because of this tension, non-elected judges must show great restraint in overturning laws passed by the people’s representatives. They have an obligation to make “principled” decisions, and to intervene in the political process only when absolutely necessary--when there has been a “clear mistake.”

Bickel’s critics note, however, that ours is not a pure majoritarian system. It is a constitutional democracy with a commitment to individual rights that presupposes limits on majority rule. No one can “solve” this debate, but no one can ignore it either!

Why *Marbury*, For So Many Reasons, Still Matters

The bottom line is that *Marbury v. Madison*, with all its imperfections and contradictions, continues to warrant our attention.

It created a model of judicial independence. It established the fundamental architecture of constitutional review. It planted the seed for the political questions doctrine, and enriched the separation of power principle through Marshall’s emphasis on the distinction

between ministerial acts--which judges could review--and discretionary political acts which it could or should not. And it perennially compels us to think about the evolving nature of democratic governance.

A final legacy of *Marbury* is particularly trenchant today. Marshall's efforts to protect the Court by avoiding a major brawl with Jefferson have been replayed time and again, as the Supreme Court has deferred to the President in reviewing his authority, particularly in times of war and emergency. Marshall let Jefferson off the hook; to hold him to strict accounts would have been too risky, both for Marshall himself (he regarded contemporary efforts to impeach him as serious), and for the Court itself. The Warren Court refused to confront Presidents Johnson and Nixon on the legality of the war in Vietnam. Will the Supreme Court, when asked to make a constitutional assessment of the "war on terrorism," do the same for George W. Bush and John Ashcroft?

Marbury is still prime time! How can we *not* care?

VIII. Mcculloch V. Maryland

In 1791, the U.S. government created the first national bank. At this time, a national bank was controversial. Some people believed that the national government had the power to create a national bank. Others believed that the national government did not have this power. When Thomas Jefferson was president, he did not renew the national bank's *charter*. Jefferson believed in placing greater limits on the power of the national government. However, when James Madison became president he asked Congress to create a Second Bank of the United States in 1816.

Many branches of the Bank of the United States were opened throughout the country. Some states did not like these branches. The national banks competed with state banks and people thought that the national banks were *corrupt*. In addition, states were worried about the increasing power of the national government.

The State of Maryland tried to close a branch of the Bank of the United States by making that branch pay \$15,000 in taxes. James McCulloch, who worked at the Baltimore branch of the Bank of the United States, did not pay the tax. The State of Maryland took him to court.

The State of Maryland argued that if the national government could *regulate* state banks, the state could make rules for the national bank. The State of Maryland also said that there was no permission in the Constitution for the national government to create a national bank. Article I, Section 8, Clause 18 of the Constitution lists the powers of Congress. It says nothing about creating a national bank.

On the other hand, McCulloch's attorney argued that the power to create a national bank was a "necessary and proper" power of Congress. It is true that there is nothing in the Constitution about a national bank; however, there are many things that the government must do that would be helped by a national bank. Therefore, creating a national bank is an *implied* power of Congress.

McCulloch was convicted of violating Maryland's tax law. McCulloch then appealed the lower court's decision to the Maryland Court of Appeals. After the Maryland Court

of Appeals agreed with the lower court's decision, McCulloch *appealed* to the Supreme Court of the United States, which was led by Chief Justice John Marshall.

Questions to Consider:

1. In your opinion, why did states not like the idea of a national bank?
2. What are the advantages of having a national bank? Review Article I, Section 8, Clause 18 of the Constitution. Which powers of Congress could be helped by a national bank?
3. Do the powers listed in Article I, Section 8 of the U.S. Constitution allow the government to create a national bank?
4. Should a state be able to tax a national bank? Why or why not?
5. Why do you think the Supreme Court of the United States heard the case? What made the case important?

IX- Miranda V. Arizona (1966)

Background Summary

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Ernesto Miranda was a poor Mexican immigrant living in Phoenix, Arizona, in 1963. Miranda was arrested after a crime victim identified him in a police lineup. Miranda was charged with rape and kidnapping, and interrogated for two hours while in police custody. The police officers questioning him did not inform him of his Fifth Amendment right against self-incrimination or of his Sixth Amendment right to the assistance of an attorney.

As a result of the interrogation, he confessed in writing to the crimes with which he was charged. His written statement also included an acknowledgement that he was aware of his right against selfincrimination. During his trial, the prosecution used his confession to obtain a conviction, and he was sentenced to 20 to 30 years in prison on each count, the sentences to run concurrently.

Miranda appealed his case to the Arizona Supreme Court. His attorney argued that his confession should have been excluded from trial because he had not been informed of his rights, nor had an attorney been present during his interrogation. The police officers involved admitted that they had not given Miranda any explanation of his rights. They argued, however, that because Miranda had been convicted of a crime in the past, he must have been aware of his rights. The Arizona Supreme Court denied his appeal and upheld his conviction.

The case comes down to this fundamental question: what is the role of the police in protecting the rights of the accused, as guaranteed by the Fifth and Sixth Amendments to the Constitution? The Fifth Amendment states that no person “shall be compelled in any criminal case to be a witness against himself...” The Sixth Amendment states that, “In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of counsel for his defense.” The United States Supreme Court had made previous attempts

to deal with these issues. In *Brown v. Mississippi* (1936), the Court had ruled that the Fifth Amendment protected individuals from being forced to confess. In *Gideon v. Wainwright* (1963), the Court held that persons accused of felonies have a fundamental right to an attorney, even if they cannot afford one. In 1964, after Miranda's arrest, the Court ruled that when an accused person is denied the right to consult with his attorney, his or her Sixth Amendment right to counsel is violated (*Escobedo v. Illinois*). But do the police have an obligation to ensure that the accused person is aware of these rights? If so, at what point in the criminal justice process must the defendant learn of these rights?

In 1965, the United States Supreme Court agreed to hear Miranda's case. At the same time, the Court agreed to hear three other similar cases, *Vignera v. New York*, *Westover v. United States*, and *California v. Stewart*, and the cases were combined. Since *Miranda* was listed first among the four cases considered by the Court, the decision came to be known by that name. The decision in *Miranda v. Arizona* was handed down in 1966.

Questions to Consider:

1. What rights of the accused are protected by the Fifth Amendment? The Sixth Amendment?
2. How might knowledge of these rights have changed what Ernesto Miranda did when he was questioned by the police?
3. Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In the *Miranda* case, what values must be balanced against the right against self-incrimination and the right to counsel?
4. You are probably learning about the rights of the accused in a government or history class. Some would argue that it is the individual's responsibility to know what his or her rights are under the Constitution, and the government can assume that accused persons know their rights without explicitly informing them. Do you think the government should have to inform each individual who is arrested of his or her rights? Why or why not?

Miranda v. Arizona (1966)

Key Excerpts from the Majority Opinion

The case was decided 5 to 4. Chief Justice Warren delivered the opinion of the Court.

The cases before us raise questions which go to the roots of our concepts of American criminal Jurisprudence: the restraints society must observe consistent with the Federal Constitution in prosecuting individuals for crime. More specifically, we deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself....

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody... As for the procedural safeguards to be employed... the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned...

The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given....

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it... [T]his warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system - that he is not in the presence of persons acting solely in his interest...

... [W]e hold that an individual held for interrogation must be clearly informed that he has the right to consult with a lawyer and to have the lawyer with him during interrogation under the system for protecting the privilege we delineate today... No amount of circumstantial evidence that the person may have been aware of this right will suffice to stand in its stead: Only through such a warning is there ascertainable assurance that the accused was aware of this right.

If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney... The privilege against self-incrimination secured by the constitution applies to all individuals. The need for counsel in order to protect the privilege exists for the indigent as well as the affluent...

The principles announced today deal with the protection which must be given to the privilege against self-incrimination when the individual is first subjected to police interrogation while in custody at the station or otherwise deprived of his freedom of action in any significant way. It is at this point that our adversary system of criminal proceedings commences, distinguishing itself at the outset from the inquisitorial system recognized in some countries. Under the system of warnings we delineate today or under any other

system which may be devised and found effective, the safeguards to be erected about the privilege must come into play at this point...

... [W]e hold that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized...

Key Excerpts from the Majority Opinion

Questions to Consider:

1. What fundamental questions does Chief Justice Warren say this case raises about the American justice system?
2. What does he mean by “custodial interrogation?”
3. Why does he say we should not rely on asking individuals whether they are aware of their rights without a warning being given?
4. Do you agree that when a person is taken into custody and subjected to questioning, the privilege against self-incrimination is jeopardized unless explicit warnings are given about rights? Why or why not? Should there be any exceptions to this rule? Explain.

Miranda v. Arizona (1966)

Key Excerpts from the Dissenting Opinion

The case was decided 5 to 4. Justice Harlan, with Justices Stewart and White joining, wrote the main dissenting opinion.

I believe the decision of the Court represents poor constitutional law and entails harmful consequences for the country at large. How serious these consequences may prove to be only time can tell. But the basic flaws in the Court’s justification seem to me readily apparent now once all sides of the problem are considered...

The new rules are not designed to guard against police brutality or other unmistakably banned forms of coercion. Those who use third-degree tactics and deny them in court are equally able and destined to lie as skillfully about warnings and waivers. Rather, the thrust of the new rules is to negate all pressures, to reinforce the nervous or ignorant suspect, and ultimately to discourage any confession at all. The aim in short is toward “voluntariness” in a utopian sense, or to view it from a different angle, voluntariness with a vengeance...

Without at all subscribing to the generally black picture of police conduct painted by the Court, I think it must be frankly recognized at the outset that police questioning allowable under due process precedents may inherently entail some pressure on the suspect and may seek advantage in his ignorance or weaknesses...

The Court’s new rules aim to offset... minor pressures and disadvantages intrinsic to any kind of police interrogation. The rules do not serve due process interests in preventing blatant coercion since... they do nothing to contain the policeman who is prepared to lie from the start. The rules work for reliability in confessions almost only in the... sense

that they can prevent some from being given at all. In short, the benefit of this new regime is simply to lessen or wipe out the inherent compulsion and inequalities to which the Court devotes some nine pages of description.

What the Court largely ignores is that its rules impair, if they will not eventually serve wholly to frustrate, an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it. There can be little doubt that the Court's new code would markedly decrease the number of confessions. To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.

How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy... How much harm this decision will inflict on law enforcement cannot fairly be predicted with accuracy...

We do know that some crimes... cannot be solved without confessions, that ample expert testimony attests to their importance in crime control, and that the Court is taking a real risk with society's welfare in imposing its new regime on the country. The social costs of crime are too great to call the new rules anything but a hazardous experimentation. . . .

Though at first denying his guilt, within a short time Miranda gave a detailed oral confession and then wrote out in his own hand and signed a brief statement admitting and describing the crime. All this was accomplished in two hours or less without any force, threats or promises and...without any effective warnings at all. Miranda's oral and written confessions are now held inadmissible under the Court's new rules. One is entitled to feel astonished that the Constitution can be read to produce this result. These confessions were obtained during brief, daytime questioning conducted by two officers and unmarked by any of the traditional indicia of coercion. They assured a conviction for a brutal and unsettling crime, for which the police had and quite possibly could obtain little evidence other than the victim's identifications, evidence which is frequently unreliable. There was, in sum, a legitimate purpose, no perceptible unfairness, and certainly little risk of injustice in the interrogation. Yet the resulting confessions, and the responsible course of police practice they represent, are to be sacrificed to the Court's own finespun conception of fairness which I seriously doubt is shared by many thinking citizens in this country...

Nothing in the letter or the spirit of the Constitution or in the precedents squares with the heavy-handed and one-sided action that is so precipitously taken by the Court in the name of fulfilling its constitutional responsibilities. The foray which the Court makes today brings to mind the wise and farsighted words of Mr. Justice Jackson in *Douglas v. Jeannette*: "This Court is forever adding new stories to the temples of constitutional law, and the temples have a way of collapsing when one story too many is added."

Key Excerpts from the Dissenting Opinion

Questions to Consider

1. Why does Justice Harlan say the *Miranda* warnings are not designed to guard against “police brutality or other unmistakably banned forms of coercion?”
2. According to Harlan how will the Court’s new rules impair “an instrument of law enforcement that has long and quite reasonably been thought worth the price paid for it?”
3. Why does Harlan say the Court’s new rules are “hazardous experimentation?”
4. This case involves the balancing of individual rights against the desire of society to fight crime. How do Justice Harlan and Chief Justice Warren differ in how they believe these rights and values should be balanced?
5. How has reading the excerpts from the majority and minority opinions changed your opinion about this case?

***Miranda* Warnings and the Bill of Rights**

You may be familiar with the “*Miranda* Warnings” from television and the movies. But what do they really mean? And what rights from the Bill of Rights are they designed to protect?

For this activity, you will work in small groups. Each group will need a copy of the *Miranda* Warnings (see below) and a copy of the Bill of Rights. Your group should be prepared to share what you do with the rest of the class, either on poster paper, an overhead, or the blackboard.

First, within your group, take each sentence of the *Miranda* Warnings and translate them into language that makes sense to you. You might re-word “You have the right to remain silent” as “You do not have to speak if you don’t want to.”

Next, match each phrase of your re-worded *Miranda* Warnings with the right in the Bill of Rights that it is designed to protect. Within your group, discuss:

- 1) Why is this right so important that the Supreme Court decided people accused of crimes must be informed of it?
- 2) Does informing a person of the right provide absolute protection against a violation of that right?
- 3) How can police be certain that an accused person understands the meaning of the *Miranda* Warnings?

***Miranda* Warnings and the Bill of Rights**

Make a chart like the one shown below to help you organize your thoughts. Your teacher will lead a class activity during which you will share what you discussed in your group.

***Miranda* Warnings**

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to have an attorney present before any questioning.

4. If you cannot afford an attorney, one will be appointed to represent you before any questioning. Do you understand these rights?

	Sentence from <i>Miranda</i>	Put in your own words	Bill of Rights
1.			
2.			
3.			
4.			

***Miranda* and the Exclusionary Rule**

In the United States, one of the ways that the judicial branch checks the executive branch is via the **exclusionary rule**. Under this policy, illegally obtained evidence is inadmissible in court. While this applies primarily to Fourth Amendment protections against illegal search and seizure, it also applies to the Fifth Amendment protections against self-incrimination. This means that if the police fail to inform a suspect of his right to remain silent, and the suspect confesses, then the confession can not be introduced as evidence in the suspect's trial.

There has been a great deal of controversy over this, so in recent years, the Courts have relaxed the standard a bit. For instance, they now apply what is known as the "good faith" exception. Under this standard if police believed, for instance, that a search warrant was legal, but later found out that it was technically flawed, the evidence obtained in the search would still be admissible.

In many democratic nations, including England, violations of police procedure are handled quite differently. There, if the police violate criminal procedure, they are reprimanded; they might be punished or sued. However, the illegally obtained evidence is still admissible in court.

***Miranda* and the Exclusionary Rule**

Questions to Consider:

1. What is the purpose of the exclusionary rule?
2. What are some potential consequences of the exclusionary rule?
3. What do you think about the way that violations of police procedure are handled in England?
4. Should the United States keep or abolish the exclusionary rule? Explain your answer.
5. Some criticize the exclusionary rule as only protecting guilty people. It does nothing, for example, to protect against an illegal search or a failure to give *Miranda* warnings that produce no evidence or confession. Do you agree or disagree with this criticism? Explain.

Controversy over the Court's Decision

The Supreme Court's decision in *Miranda* was met with criticism when it was handed down in 1966, and it continues to be controversial today. In this exercise you will read some recent pieces of commentary on the decision and its effect on law enforcement. Decide whether the writer is supporting (pro) or criticizing (con) the decision in *Miranda*. Then you will write a paragraph expressing your own opinion about the decision.

Beyond *Miranda*

In the time since the *Miranda* was decided in 1966, the Supreme Court has decided several cases directly related to the issues in the *Miranda* case. Below are brief descriptions of the issues presented to the justices in several of these cases. How would you decide these cases if you were on the Supreme Court? For the purpose of this exercise, you should assume that you cannot overturn the *Miranda* decision. First, let's review the main points of the *Miranda* decision, written by Chief Justice Earl Warren in 1966:

- 1) Persons in police custody must be warned of their rights before they are questioned, as follows: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you".
- 2) The failure to warn the accused prior to interrogation leads to the presumption that statements made by the accused were involuntary and must be suppressed because of the Fifth Amendment's protection against a person being "compelled in a criminal case to be a witness against himself".

Post-*Miranda* Cases:

Harris v. New York (1971)

Harris was arrested for selling heroin to an undercover detective. He had not been given his *Miranda* warnings when he said to the police officers that he had made the sales at the request of the undercover officer. At trial, the prosecution did not use the statement the defendant made during their case.

However, when he took the stand, he denied making the sales, contradicting what he had previously told the police. The prosecutors then used his initial statement to impeach, or make less credible, his testimony. Should the prosecutors have been allowed to use Harris's pre-*Miranda* statement at trial, or did its use violate his constitutional rights?

Michigan v. Tucker (1974)

In this case, the accused was warned of his right against self-incrimination, but not of his right to a lawyer.

In the defendant's statement, a person was identified as a potential witness. The defendant's lawyer argued that the witness could not testify, since the witness would be

“derivative evidence” arising from the defendant’s statement, which was not allowed in court because of the violation of *Miranda*.

Since the statement itself could not be used in court against the defendant, could the witness still testify, even though the witness would never have been found if not for the statement?

New York v. Quarles (1984)

A woman told two police officers she had been raped at gun point. She gave them a description of the suspect and told them he had gone into a supermarket nearby. One of the officers apprehended Quarles in the store, searched him, and found that he was wearing an empty holster. He asked Quarles where his gun was and he told him. The officer arrested Quarles and read him his *Miranda* rights.

Should the suspect’s statement about the gun be suppressed at trial, since it was made before the *Miranda* warnings were given?

Oregon v. Elstad (1985)

Elstad was suspected of committing burglary. He was arrested in his home and made an incriminating statement before being read his *Miranda* warnings. He was then taken to the police station where the police read him his *Miranda* rights. He waived his *Miranda* rights and the police questioned him; during the questioning, he confessed to the crime and signed a written confession.

Elstad’s first statement that he was involved in the crime was suppressed at trial, but his second statement was used against him and he was convicted. Should the second statement also be suppressed at trial?

Illinois v. Perkins (1990)

In this case, police informants posed as prisoners in order to obtain evidence of Perkins’ involvement in a murder. Perkins made statements to the one of the “prisoners” implicating himself. This information was subsequently used at trial and Perkins was convicted. There had been no *Miranda* warning, since the defendant did not know he was speaking to someone acting on behalf of the police.

Should the defendant’s incriminating statements have been allowed at trial, considering that they were made without the defendant being warned of his rights?

Post-*Miranda* Cases: How the Supreme Court Decided

Harris v. New York (1971)

The Court said that *Miranda* did not mean that evidence barred from use during the prosecution’s case could not be used for any purpose. They said the *Miranda* protection could not be “perverted into a license to use perjury by way of a defense, free from the risk of confrontation with prior inconsistent utterances.”

Michigan v. Tucker (1974)

The Court ruled that the witness could testify. In this case they made a distinction between a violation of the Fifth Amendment right against self-incrimination and a mere violation of the *Miranda* rule. Since the defendant was warned about his right against self-incrimination, the Court allowed the witness to testify.

New York v. Quarles (1984)

The Court said there is a “public safety” exception which applies in this case. The police officer acted to further public safety and therefore the statement made by the defendant (telling of the location of the weapon) before his *Miranda* rights were read to him was admissible in court.

Oregon v. Elstad (1985)

The Court ruled that admissions made prior to *Miranda* warnings must be suppressed, but later statements, if made voluntarily, may be used in court. “[T]he mere fact that a suspect has made an unwarned admission does not warrant a presumption of compulsion,” Justice O’Connor wrote.

Illinois v. Perkins (1990)

Justice Kennedy, writing for the majority, held that conversations between suspects and undercover officers are not held in a “police-dominated atmosphere” and therefore *Miranda* warnings are not necessary. No coercion was possible because there was no official interrogation.

A Real World Case Study: *Homicide by David Simon*

In this activity, you will consider one of the main points of Chief Justice Warren’s decision in *Miranda*, and how it relates to real-life police work as depicted in David Simon’s book about Baltimore Police Department homicide detectives. You will look at passages and answer questions in small groups.

Finally, you will write a short essay in response to the prompt at the end of this activity.

In his majority opinion in *Miranda v. Arizona*, Chief Justice Warren writes that one of the main purposes of the *Miranda* warnings is “to make the individual more acutely aware that he is faced with a phase of the adversary system - that he is not in the presence of persons acting solely in his interest.” He also disapprovingly cites passages from police interrogation manuals which instruct police to “persuade, trick, or cajole” suspects. Chief Justice Warren writes: “any evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege. The requirement of warnings and waiver of rights is a fundamental... and not simply a preliminary ritual to existing methods of interrogation.”

Simons, David. *Homicide: A Year on the Killing Streets*. New York: Ballantine Books, 1991.

Questions to Consider:

1. Why is it important that an accused person be aware that he or she is “faced with a phase of the adversary system”—that is, that the police are not on his or her side?
2. Should the police be allowed to “persuade, trick, or cajole” people suspected of committing crimes in order to get them to confess?
3. What is Chief Justice Warren’s goal in trying to ensure that defendants voluntarily waive their privilege before being questioned?
4. Have you seen—either in real life, on television or in a movie—an instance of police interrogation which you think violates the standard set by Chief Justice Warren in his opinion? If so, describe it.

In 1991 David Simon, a *Baltimore Sun* reporter, wrote a book about the Baltimore Police Department’s homicide squad. The book, *Homicide: A Year on the Killing Streets* (Houghton Mifflin Co., 1991), was later adapted for television.

Simon describes in his book how Baltimore homicide detectives deal with the requirements of the *Miranda* decision. He writes that before a suspect is asked whether he wants to waive his rights and talk about his case, the detective offers him a chance to tell his side of the story—warning that asserting his rights will only make things worse:

“Once you up and call for that lawyer, son, we can’t do a damn thing for you... [T]he next authority figure to scan your case will be a tie-wearing, three-piece bloodsucker -a no-nonsense prosecutor from the Violent Crimes Unit... And God help you then, son... Now’s the time to speak up... because once I walk out of this room any chance you have of telling your side of the story is gone and I gotta write it up the way it looks... And it looks right now [like] first-... degree murder.”

Simon concludes that “the fraud that claims it is somehow in a suspect’s interest to talk with police will forever be the catalyst in any criminal interrogation.” He says detectives try to get suspects to speak by offering them “the Out.” Suspects must be “baited by detectives with something more tempting than penitence. They must be made to believe that their crime is not really murder, that their excuse is both accepted and unique, that they will, with the help of the detective, be judged less evil than they truly are.”

The goal is to get the suspect to believe the detective is on his side and will help him, when in fact the detective is trying to get the suspect to confess.

Questions to Consider:

1. Do the actions of Baltimore homicide detectives, as described by David Simon, seem to be in compliance with Chief Justice Warren’s opinion in *Miranda*? Why or why not?
2. Do you think it is fair for police officers to deceive or trick suspects in custody? Why or why not? If you do not think it is generally fair, can you think of circumstances when you think it would be fair?

3. How would strict compliance with *Miranda* change homicide interrogations as depicted in David Simon's book?
4. How would strict compliance with *Miranda* protect individual rights in homicide interrogations as depicted in David Simon's book?

*Estructuras gramaticales básicas
en inglés
y sus equivalentes en español*

Sintaxis

La sintaxis estudia la manera en que las palabras, frases u oraciones se ordenan. Por medio de la sintaxis podemos discernir que funciones gramaticales cumplen los distintos elementos constitutivos (las palabras y/o frases) en una oración, según su posición en la misma.

Las palabras se clasifican de la siguiente manera:

- Sustantivos
- Verbos
- Adjetivos
- Adverbio
- Pronombre
- Preposición
- Conjunción
- Artículo

Sustantivos: palabras que evocan un concepto por sí mismo. Se refieren a las cosas o personas de las que se habla en la oración. El sustantivo es siempre el núcleo del sujeto en una frase nominal.

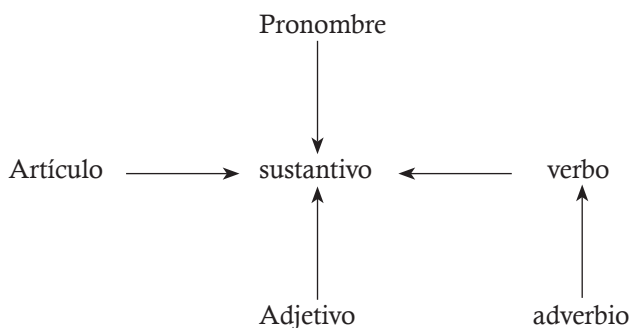
El **adjetivo** es la palabra que modifica al sustantivo, lo califica.

- *an important law* una ley importante – una importante ley
- *an extremely difficult case* un caso extremadamente difícil

El **adverbio** modifica al verbo o frase verbal en la oración.

- *The lawyers act quickly* Los abogados actúan rápidamente
- *The judge conducts the session slowly* El juez conduce la sesión lentamente

El **verbo o frase verbal** es toda palabra o frase, respectivamente, que va inmediatamente después del sujeto en la oración. No puede existir oración sin verbo ni sujeto. Ambos elementos son indispensables en la oración, tanto en inglés como en español.



La oración en Inglés y en Español

¿Qué es una oración? Por definición, una oración es un conjunto de palabras que puede concebirse como una unidad primaria del lenguaje, y que consta de un sentido mínimo de integridad, capaz de expresar un pensamiento completo. ⁶

Toda oración en inglés posee **dos núcleos**. El primero se encuentra dentro de lo que se denomina **Frase Nominal (FN)** o *Noun Phrase (NP)*. El segundo se encuentra dentro de la **Frase Verbal (FV)** o *Verb Phrase (VP)* en inglés, la cual está compuesta por un verbo o un conjunto verbal que puede o no estar seguido de componentes.



Lea las siguientes oraciones, tradúzcalas y demarque las Frases Nominales y las Frases Verbales:

- 1) The witnesses are ready to testify.....
- 2) A jury is made of 12 ordinary citizens.....
- 3) The inexperienced attorney can win this case.....
.....
- 4) A constitution is a body of rules that governs the affairs of individuals.....
.....

La oración en Español	The sentence in English

Nótese que contrastando los dos idiomas, debemos tener en cuenta que en inglés el orden sintáctico único y aceptable es **S (FN) + V (FV) + C (complementos)** mientras que en español ese orden es variable.

⁶ Tom Mc. Arthur (Ed.). (1992) *The Oxford Companion to the English Language* New York: Oxford University Press.

La oración en Español	The sentence in English
1) S + V + C 2) V + S + C 3) C + V + S Los documentos están en aquel cajón. Están, los documentos, en aquel cajón. En aquel cajón están los documentos.	S + V + C 1) The documents are in that drawer.

La Frase Nominal

Es importante saber reconocer la FN y su núcleo en particular debido a que en inglés ésta determina el género y número de la oración. En inglés siempre encontraremos a la frase nominal delante de la frase verbal.

La Frase Nominal o NP puede estar compuesta de diferentes componentes tales como:

a) Pronombre (pronoun):

He is the new member at the Bar.....

She is the new member at the Bar.....

b) Sustantivo (noun):

Common Law is applied in England.....

c) Artículo + sustantivo:

The jurors are not present yet.....

A juror is not present yet

d) Sustantivo + sustantivo:

State courts have limited jurisdiction.....

e) Adjetivo + Sustantivo:

A recent publication of the code is available.....*

Obsérvese la posición del adjetivo en inglés. Éste se encuentra siempre pre- modificando al sustantivo.

La Frase Verbal

Tanto en inglés como en español la FV puede estar constituida por un verbo que puede ir o no seguido de otros componentes. La frase verbal es importante ya que la misma lleva el contenido semántico de la idea por ella expresada y determina el tiempo verbal en que la idea fue formulada (tiempo presente o pretérito – forma futura)

Formas del verbo “to be” en inglés y en español

El verbo “to be” en inglés expresa las nociones de “ser” y “estar” conjuntamente. Dicha diferencia semántica estará determinada por el contexto en donde este se encuentre y por los complementos verbales.

THE VERB “TO BE”	VERBO SER O ESTAR
<i>I am (not)</i>	Yo (no) soy / estoy
<i>He is (not)</i>	Él (no) es / está
<i>She is (not)</i>	Ella (no) es / está
<i>It is (not)</i>	Eso (no) es / está
<i>They are (not)</i>	Ellos (no) son / están
<i>You are (not)</i>	Tú (no) eres / estas
<i>We are (not)</i>	Nosotros (no) somos / estamos
<i>They are (not)</i>	Ellos (no) son / están

Nótese la variación de significado:

- a) *The judge is near the stand.*
El juez **está** cerca del estrado.
- b) *A judge is the most powerful person in court.*
Un juez **es** la persona más poderosa en la corte.

Así mismo es importante destacar que el verbo “to be” también expresa otros conceptos. Lea y traduzca las siguientes oraciones y preste atención al significado del verbo “to be”:

- *The lease contract is 6 pages long.*
- *The lake is 45 meters deep.*
- *Are the columns 15 meters high?*
- *He is not 45 years old.*
- *That wall is 2.5 meters wide.*
- *The bag with the incriminating proofs is not 20 kg.*

El texto y su organización conceptual⁷

Un conjunto de oraciones conforma lo que se denomina texto. En todo texto encontramos una organización conceptual. Entendemos por la misma a la relación entre las oraciones (ideas) expresadas y la jerarquización de la información comunicada. Al traducir un texto del inglés al español debemos tener en cuenta estas relaciones y las distintas formas de trasladar la información del inglés al español. Para lograr este objetivo debemos tener en cuenta los siguientes elementos:

⁷ Vidal Lamiquiz. *Lengua Española. Métodos y estructuras Lingüísticas*. Barcelona: Ariel Lingüística, 1987.

Conectores: Palabras que marcan una determinada relación entre los conceptos en el texto: *however, moreover, nevertheless, but, or, and, in fact* etc.

Referentes: todas aquellas palabras que se usan para evitar ser redundantes. Tal es el caso de los pronombres personales, pronombres relativos (*that, who, which...*), demostrativos, algunos verbos auxiliares etc.

Pronombres personales – adjetivos y pronombres posesivos

Pron. Personales (sub)	Pron. Personales (obj)	Adjetivos posesivos	Pronombres posesivos
I (yo)	Me (para, por, de mi)	My (mi)	Mine (mío)
You (tú)	You (para, por, de vos)	Your (tú)	Yours (tuyo)
He (él)	Him (para, por, de él)	His (su)	His (suyo)
She (ella)	Her (para, por, de ella)	Her (su)	Hers (suya)
It (el-eso)	It (para, por, de esto)	Its (su)	Its (de el)
We (nosotros)	Us (para, por, de nosotros)	Our (nuestros)	Ours (nuestro)
You (uds.)	You (para, por, de uds.)	Your (tus)	Yours (suyos)
They (ellos)	Them (para, por, de ellos)	Their (sus)	Theirs (de ellos)

Los pronombres personales subjetivos se ubican precediendo a la frase verbal y son núcleos de la FN.

- Los pronombres personales objetivos están ubicados después de la FV y generalmente actúan como núcleo de una **frase preposicional**.
- Los adjetivos posesivos son adjetivos en cuanto pre-modifican una FN.
- Los pronombres posesivos se posicionan después del verbo y de las FN a las que hagan referencia.

¿Cuál es el equivalente en español de las siguientes oraciones?

- 1) He is a barrister. He rents his office near the Courtroom. Five other barristers work with him. The case is his.
- 2) We have no chances. Our case is quite complicated. The evidence is all against us.

Other meanings of the verb “to be”

- *How would you say the following in Spanish?*
 - a. The witness is 45 years old.
 - b. The courtroom is 25 m. high.
 - c. The bag that contains the incriminating proofs is 15 kg.
 - d. The presentation is 100 pages long.
 - e. The lake is 20 m. deep.

Formas del verbo “haber” en inglés

El verbo haber en inglés se forma al combinar la palabra **There** + **una forma conjugada del verbo “to be”**. A diferencia del español, el verbo “haber” en inglés debe coincidir en número con la frase nominal en cuestión. Observe:

1. **There is** a new amendment concerning speech rights.
2. **Hay** una nueva enmienda que atañe los derechos de expresión.
3. **There are** new amendments concerning speech rights.
4. **Hay** nuevas enmiendas que atañen los derechos de expresión.

Sin embargo, la forma “there” también puede combinarse con verbos modales. Si ese es el caso, la forma es invariable con respecto al número.

- a. **There is** a contradiction in the witness’ statement.
- b. **There are** several contradictions in the witness’ declaration.
- c. **There can be** a contradiction in the witness’ statement.
- d. **There can be** several contradictions in the witness’ declaration.

¿Cuál es el equivalente en español de las siguientes oraciones?

- a. There are 12 jurors in a jury trial.....
- b. There may be little evidence to implicate him.....
.....
- c. There is a young judge presiding the hearing.
.....
- d. There is a very high rate of divorce in England and Wales.....
.....
- e. There are figures that show that the vast majority of divorce petitions are issued by wives.....
.....

Plurales de sustantivos

Es importante saber reconocer las diferentes formas de pluralización que se producen en inglés debido al trabajo a realizarse con diccionarios. Debemos ser capaces de aislar las raíces de los sustantivos para así poder hallar su acepción. Para esto, analicemos los siguientes casos:

- ✓ Aquellos sustantivos que terminan en -s / -sh / -ch / -x se pluralizan al agregar “es” a su raíz. Por ejemplo: *address / addresses*
- ✓ Aquellos sustantivos que terminan en consonantes distintas a las antes mencionadas, se pluralizan agregando “s” a su raíz. Por ejemplo: *prosecutors / issues / indictments*.
- ✓ Aquellos sustantivos que finalizan en “Y” precedida por una consonante, se pluralizan cambiando la “Y” por “i” y agregando “es”. Por ejemplo: *policy – policies / surety – sureties*.
- ✓ Aquellos sustantivos que finalizan en “y” pero la misma esta precedida por una vocal, solamente se procede a agregar “s”. Por ejemplo: *attorney – attorneys*.
- ✓ Aquellos sustantivos terminados en “f” o “fe” cambian la “f” por “v” y se agrega “es”, por ejemplo: *wife – wives*.
- ✓ Hay otros cuyas vocales internas cambian produciéndose de ese modo el plural del mismo. Por ejemplo: *foot – feet*.
- ✓ Existen también **plurales irregulares** como los siguientes: *Child – children / Man – men / woman – women / ox – oxen*.

Plurales de origen Latino

- ✓ Algunos sustantivos que terminan en “-us” se pluralizan cambiando su final a “-i”
Nucleus – nuclei / radius – radii / stimulus – stimuli.
- ✓ Sin embargo, otros que terminan en “-us” tienen un plural diferente:
Corpus – corpora / genus – genera.
- ✓ Sustantivos que terminan en “-is” pluralizan cambiando su final a “-es”:
Analysis – analyses / crisis – crises / hypothesis – hypotheses.
- ✓ Los que terminan en “-ix” o “-ex” pluralizan cambiando su final a “-ces”:
Appendix – appendices / index – indices / matrix – matrices
- ✓ Aquellos que finalizan en “-um” pluralizan cambiando su final a “-a”:
Aquarium – aquaria / memorandum – memoranda.
- ✓ Algunos finalizan en “-a” y pluralizan agregando “-e”:
Larva – larvae / vertebra – vertebrae / Alumna – alumnae

Plurales de origen Griego

- ✓ Aquellos que terminan en “-on” pluralizan cambiando a “-a”:
Criterion – criteria / phenomenon – phenomena

Plurales de origen Frances

- ✓ Algunos sustantivos son idénticos tanto en su forma singular como plural.
Bourgeois – Corps – Chassis – Patois – Précis – Rendezvous.

Trabaje con el diccionario. Determine la raíz de los siguientes sustantivos y encuentre su significado.

- *Affidavits*
- *Duties*

- *Intestacies*
- *Jurymen*
- *Procedures*
- *Losses*
- *Knives*
- *Plays*

El posesivo / caso genitivo en inglés y en español

El posesivo o también conocido como **caso genitivo** en inglés se desdobra en dos estructuras posibles ('s / of) equivalentes a una única en español (de / del...).

La función primordial de esta estructura es la de denotar **posesión** o **pertenencia**. Es importante destacar que encontraremos (**'s**) acompañando a sustantivos comunes y singulares como así también a nombres propios que finalicen en vocal o en –s. Los sustantivos que se encuentren en plural, irán acompañados solamente por (**'**) en el caso de los plurales regulares. La forma genitiva ('s / ') se aplicaran a entidades vivas, mientras que se usará la preposición "**of**" para los sustantivos inanimados.

Nótese los siguientes ejemplos:

A citizen's rights and duties.

- Los derechos y obligaciones **de** un ciudadano.

The nation citizens' rights and duties.

- Los derechos y obligaciones **de** los ciudadanos de la nación.

Mr. Stevenson's liability will be denied.

- Se negará la responsabilidad criminal **del** Sr. Stevenson.

The Jones's case will be closed.

- Se cerrará el caso **de** los Jones.

The custody of the children will be given to Mrs. Smith.

- Se le otorgará la tenencia **de** los niños a la Sra. Smith.

The first ten amendments of the constitution.

- Las 10 primeras enmiendas **de** la constitución.

Existen otras nociones conceptuales que también pueden ser expresadas por el genitivo:

a) Temporal: *in a century's time.*

b) Longitud: *two pages' report.*

Wh- Words en preguntas

Los siguientes palabras son frecuentemente usadas en lo que en inglés se denominan "*information questions*"; es decir preguntas que eliciten la información que se encuentra implícita en el significado de las *WH- words*. Estas son:

<i>Who</i>	Quién	<i>Who is the Plaintiff?</i>
<i>Where</i>	Dónde	<i>Where is the courtroom?</i>
<i>When</i>	Cuándo	<i>When is a person entitled to a bail?</i>
<i>Which</i>	Cuál	<i>Which course of action is better?</i>
<i>What</i>	Qué	<i>What jurisdiction are they tried in?</i>
<i>Why</i>	Por Qué	<i>Why is a contract an agreement?</i>
<i>How Much</i>	Cuánto	<i>How much is the counselor's fee?</i>
<i>How Many</i>	Cuántos	<i>How many amendments are there in the Bill of Rights?</i>
<i>Whose</i>	De Quién	<i>Whose client is in custody?</i>

Obsérvese otras combinaciones posibles con **how**:

<i>How long?</i>	➔	Qué tan largo, que longitud...?
<i>How deep?</i>	➔	Qué profundidad – que tan profundo...?
<i>How old?</i>	➔	Qué edad – que antigüedad...?
<i>How far?</i>	➔	A qué distancia – cuán lejos...?
<i>How big?</i>	➔	Qué tamaño – cuán grande...?
<i>How often?</i>	➔	Con qué frecuencia...?

Expresé las siguientes preguntas en español:

- a. *What's* the plaintiff's last name?
- b. *Who* is the district court attorney?
- c. *When* is the next hearing?
- d. *Where* are the remaining documents?
- e. *Whose* case is next?
- f. *How much* money is left?
- g. *How many* jurors are not ready to pass verdict?
- h. *Why* is your witness not present, counselor?

“The simple present tense” – presente simple

*The government **approves** all the rules of conduct.*

El gobierno **aprueba** todas las reglas / normas de conducta

I approve	Yo apruebo
You approve	Tú apruebas
He approves	Él aprueba
She approves	Ella aprueba
It approves	(Él – ella) aprueba
You approve	Ustedes aprueban

We approve Nosotros aprobamos
They approve Ellos aprueban

- We **need** a clear understanding of the language of law.
 Necesitamos un entendimiento claro...
- We **do not need** a clear understanding of the language of law.
 No necesitamos un entendimiento claro...
- The Nation **preserves** the legal principles
 La Nación **preserva** los principios legales.
- The Nation **does not preserve** the legal principles.
 La Nación **no conserva** los principios legales.

I do not (don't) preserve

You do not (don't) preserve

He does not (doesn't) preserve

She does not (doesn't) preserve

It does not (doesn't) preserve

You do not (don't) preserve

We do not (don't) preserve

They do not (don't) preserve

A judge looks for principles

A judge does not look for principles

Does a judge look for principles?.....

Yes, he does.....

No, he doesn't.....

Judges find evidence in precedents.....

Judges do not find evidence in all precedents.....

Do all judges find evidence in all precedents?

Yes, they do.....

No, they don't

Verbos modales – can / may

Can y *May* son verbos modales. Dichos verbos siempre anteceden a una forma infinitiva del verbo al que acompañan y pueden hacer variar **la modalidad** de la oración. Por modalidad se entiende a la forma en la cual puede ser modificado por el uso de verbos

modales o auxiliares. Tanto *CAN* como *MAY* expresan diferentes significados, entre los cuales, se destacan “**posibilidad**”, “**permiso**” y “**habilidad**”.

¿Cómo interpretaría las siguientes ideas? Deduzca el significado expresado por los verbos modales:

- a. *The judge **may** overrule the motion.*
- b. *The judge **can** overrule the motion.*
- c. ***May** I call Mr. Simpson to the stand, Your Honor?*
- d. *Considering the nature of the offense, the accused **can** be entitled to an acquittal.*
- e. *Considering the nature of the offense, the accused **may** be entitled to an acquittal.*
- f. *We **may not** be able to appeal.*
- g. *We **cannot** appeal.*

Observe las distintas combinaciones verbales a continuación y sus equivalentes en español:

- *We **can define** law as all the rules of conduct...*
Podemos definir la ley como todas las normas / reglas.....
- *Law **can be defined** as the body of legislative pronouncements...*
La ley puede ser definida como el cuerpo de pronunciamientos legislativos....
Se puede definir la ley como
- *What **can** we **do** to pass fair laws?*
¿Qué podemos hacer para aprobar leyes Justas?
- *How **can** we **promote** agreement and prevent the perilous quarrels it **arouses**?*
¿Cómo podemos promover el acuerdo y prevenir...?
- *How **can** unfair laws **be prevented**?*
¿Cómo se pueden prevenir las leyes injustas?

Elementos referenciales que dan cohesión a un texto en inglés y español

A modo de resumen, según Lozano, Peña-Marín y Abril⁸ existen factores que conforman la coherencia en un nivel superficial (algunos autores llaman cohesión). Entre estos elementos encontramos conjunciones, artículos, pronombres etc. Algunos autores denominan al artículo “deixis **anafórica**” textual. Es decir, es un índice **previo** / **anterior**

⁸ Lozano, Peña-Marín y Abril *Análisis del discurso. Hacia una semiótica de la interacción textual*. Cátedra. Madrid: 1989. pp. 22–23.

al sustantivo que sirve, entre otras funciones, para situarlo textualmente y favorecer la coherencia. Cuando la referencia textual esta **después** del sustantivo u otro elemento referido en el texto, la denominamos referencia **catafórica**.

Lea el texto a continuación prestando atención a las palabras y frases subrayadas. Observe las referencias:

“...**Some elements of Saxon practice** linger, including *trial by ordeal* (by burning the hand, for example), which is retained until 1215. *Outlawry*, a Saxon procedure whereby a fugitive is placed outside the protection of the law, is retained for centuries to deal with people **who** flee from justice. Gradually, however, new procedures take the place of these crude devices. ...”

a. “*Some elements of Saxon practice...*” hace referencia a:

.....

b. “*Who*” hace referencia a:

¿Cuál de ellos hace referencia “catafórica” y cuál de ellos hace referencia “anafórica”?

- a.
- b.

Formas con “-ing” en inglés y en español

Observe las estructuras a continuación y traduzca las oraciones:

“TO BE + -ing.” – Frase verbal (present simple)

- a. *The plaintiff is preparing the paperwork for the trial.*
- b. *At the moment the counsellors are cross-examining the witnesses.*

“-ing” como sujeto en la oración

- c. *Suing such an important company is y no means advisable.*
- d. *Appealing is only possible in higher courts.*

“-ing” + noun” función adjetiva (calificando a un sustantivo)

- e. *The claiming party is entitled to all the rights outlined in the contract.*
- f. *The body of doctrines and practices that form the fundamental organizing principle of a political state.*
- g. *Amendments can be made to existing constitutions and statutes and are also commonly made to bills in the course of their passage through a legislature.*

“PREP. + -ing”

- h. Constitutional law is the body of law created by applying and interpreting the Constitution of the US together with its successive amendments.

“Introduciendo una oración adjetiva o relative clause”

- i. The courts have attempted, in a few instances, to protect the persons who have changed their positions relying on an unconstitutional statute.
- j. ... that any person claiming public authority must be specifically or by implication warranted by a constitutional provision.
- k. Article IV is the full faith and credit clause, establishing that all states must recognize the laws of other states.

Verbos que expresan modalidad

Estructura

En el presente: Subject + Modal + Base Form + Objects

<i>I</i> <i>You</i> <i>He, She</i> <i>We</i> <i>They</i>	<i>must be</i> <i>might be</i> <i>could be</i> <i>can't be</i>	<i>at work.</i>
--	---	-----------------

“a trade union could operate under the terms of a formal written document...”

“...all other rules must conform to them”

“...it can operate its important institutions according to some fundamental body of rules”

“... Constitutions may be written or unwritten; they may be complex or simple; they may provide for vastly different patterns of governance. Even if the only rule that matters is the whim of an absolute dictator, that might be said to be the constitution._”

Como vimos anteriormente, los verbos modales son palabras, tales como *must*, *should*, *can* o *may*, que modifican el significado del verbo principal en la oración. El verbo modal le agrega, al verbo principal, información acerca de “posibilidad, habilidad, necesidad, obligación, sugerencia etc”

Expresa las ideas a continuación en español:

a. The judge **can** dismiss the case

b. They **must** describe the court system.

- c. All lawyers **must** pass the bar exam before they **can** practice in Kansas.
- d. Everyone accused of a felony **should** hire an attorney, but of course, it is not required by the law.
- e. Harry is a good lawyer, but you **might** want to talk to Peter; this is his specialty.
- f. They **cannot** (**can't**) represent you in court.

Expresa los distintos significados de los siguientes verbos en español:

- Can:
- Could:
- Must:
- Might:

May & Shall⁹

En el inglés jurídico el verbo **may** implica un derecho o privilegio a ser ejercido. Observe los ejemplos a continuación o exprese sus equivalentes en español:

*“C – Restitution. – An order of restitution under section 3663 of this title with respect to a violation of this section **may** also include restitution-
1- for the reasonable cost of repeating any experimentation that was interrupted or invalidated as a result of an offence; ... (18 U.S.C. 43)”*

Shall, por otro lado, es usado en el inglés jurídico para indicar una “obligación” o para establecer formalmente un estado de cosas.

*“... Section 2. The President **shall** be Commander in Chief of the Army and Navy of the United States, ... (U. S. C. art. II, 2)”*

En otros casos observamos que **shall** se puede usar para expresar lo que en inglés se denomina “*mandatory action*” Una acción que debe ser tomada o cumplida.

*“The United States **shall** guarantee to every State in this Union a Republican Form of Government, ... (U. S. C. art. IV)”*

⁹ Lee, Hall & Hurley *American Legal English*. Michigan University Press. Ann Arbor: 1999. pp 216–217.

Casos de predicciones e inferencias¹⁰

Observe las oraciones a continuación y expréselas en español:

- a. *The mayor could run again, but I doubt it.*
- b. *The mayor might run again if no new scandal pops up.*
- c. *The mayor may run again.*
- d. *The mayor should run again. He seems to have lots of support.*
- e. *The mayor must run again. He is bound to win.*

¿Cuál de las oraciones anteriores expresa lo siguiente: *muy probable - quizás - probable - posible, pero no cierto - no probable?*

- a. *The man could be sued.*
- b. *The man might be sued; his lawyer called today.*
- c. *The man may be sued. He is always going to court.*
- d. *He must be his lawyer. I see them every day in the Court building.*

Algunas formas pasivas en inglés y en español

Estructura pasiva en inglés

To be + past participle

Estructura pasiva en español

Ser / estar + participio pasado

Traducir: Diga si es posible expresar, en español, de distintas maneras la misma frase verbal en inglés.

- a- Amendments ***can be made*** to existing constitutions and statutes and ***are also commonly made*** to bills in the course of their passage through a legislature.
- b- "...such amendments ***are usually submitted*** to an exactly prescribed procedure
- c- The first 10 amendments made to the Constitution ***are called*** the Bill of Rights.
- d- In many U.S. states, proposed amendments to a state constitution ***must be approved*** by the voters in a popular referendum.

<http://www.legal-database.com/amendments.htm>

¹⁰ Ibid. Lee, Hall & Hurley (1999) p. 219.

El pretérito en inglés y español

El pasado del verbo Ser o Estar

Simple past of "To Be"		Pasado del verbo Ser o Estar	
<i>I</i>	<i>Was</i>	Yo	Era / Estaba
<i>You</i>	<i>Were</i>	Tú	Eras / Estabas
<i>He</i>	<i>Was</i>	Él	Era / Estaba
<i>She</i>	<i>Was</i>	Ella	Era / Estaba
<i>It</i>	<i>Was</i>	Eso	Era / Estaba
<i>We</i>	<i>Were</i>	Nosotros	Eramos / Estabamos
<i>You</i>	<i>Were</i>	Uds.	Eran / Estaban
<i>They</i>	<i>Were</i>	Ellos	Eran / Estaban

- a. *The suspect was at the crime scene when the police arrived.*
- b. *Many executions were made between 1.950 and 1.990.*
- c. *Mr. Jones and his client were waiting anxiously for the judge's dictum.*
- d. *The child was not convicted of the crime since he was doli incapax.*
- e. *Were they innocent or guilty?*

El pasado de otros verbos

El tiempo pasado o pretérito en español se desdobra en dos formas posibles: aquellos verbos que terminan en **-aba (amaba)** o bien la forma **-é / ó (amé - demandó)**. En inglés, sin embargo, existe una forma única para hacer referencia al pasado simple (*simple past*). En inglés, los verbos pueden ser **regulares o irregulares**.

Es importante entender como inflexionan los verbos regulares para facilitar el trabajo con el diccionario. Observe:

- Finalizan en **(-ed)** aquellos cuya raíz verbal finaliza en consonante o bien en "Y" precedida por una vocal. Por ejemplo: *endow / endowed – enact / enacted – array / arrayed*.
- Finalizan en **(-d)** aquellos cuya raíz verbal finaliza en vocal. Por ejemplo: *issue / issued – lease / leased*.
- Finalizan en **(-ied)** aquellos cuya raíz finaliza en "Y" precedida por consonantes. Por ejemplo: *try / tried - levy / levied*.

Adviértase que existen algunos verbos que presentan una doble consonante al final de su raíz con antepuesta a la inflexión para el pasado. A la hora de buscar su significado, debemos suprimir tanto la inflexión como así también la última consonante. *Acquit / acquitted*

Los verbos regulares mantienen idéntica su forma tanto para el pasado simple como para su pasado participio y su forma de pasado simple es igual para todos los pronombres personales.

Busque la acepción de los siguientes verbos regulares:

- a. *Adjudicated*
- b. *Biased*
- c. *Codified*
- d. *Construed*
- e. *Enacted*
- f. *Guaranteed*
- g. *Incurred*
- h. *Witnessed*

Verbos Irregulares

Los verbos irregulares, a diferencia de los primeros, cambian su raíz verbal por completo al encontrarse en el pasado simple. Debe observarse que algunos de estos verbos siguen un patrón de cambio.

- Aquellos cuya raíz o base es idéntica a la forma pasada y al participio pasado: *set / set / set*.
- Aquellos cuyo pasado simple es igual a su forma en el participio pasado: *read / read / read*.
- Aquellos cuyas raíz, pasado simple y pasado participio son totalmente diferentes: *see / saw / seen*.

Formas negativas e interrogativas

Tanto en la forma negativa como en la interrogativa, en el pasado simple se observará la presencia del **portador de tiempo “DID”** acompañando a la forma infinitiva del verbo. Esta forma carece de traducción. Observe:

- a. *The House of Lords **HAD** to decide if the defendant could properly be convicted of rape. (AFFIRMATIVE)*
- b. *The House of Lords **DID NOT HAVE** to decide if the defendant could properly be convicted of rape. (NEGATIVE)*
- c. ***DID** the House of Lords **HAVE** to decide if the defendant could properly be convicted of rape? (INTERROGATIVE)*

Forma pretérita del verbo “Haber”

Como se menciono anteriormente el verbo “haber” en inglés está formado por la conjunción de lapalabra “*THERE*” + el verbo “*TO BE*”. Consecuentemente, la forma pretérita del verbo “haber” en inglés tendrá dos formas:

- THERE + WAS** utilizado para un referente singular.*
- THERE + WERE** utilizado con un referente plural.*

¿Cuál es el equivalente de las siguientes oraciones en español?

- a. *There were enterprising young children who were augmenting their weekly allowances by de-capitating parking meters in which **there was** money and pocked their contents*
- b. *However, in 1968 **there were** modifications in the Theft Act.*
- c. *In serious cases, all **there was** to do to protect society was to place the child into the care of a local authority.*

Formas de “negative inversion” en inglés y su traducción al español

La inversión causada por la presencia de partículas con una carga semántica negativa al comienzo de una idea es un recurso estilístico que se utiliza en inglés para **agregar énfasis** a la idea en cuestión. Al posicionar adverbios con connotación negativa como introductores de la idea, se produce una inversión de sujeto-auxiliar. Dicha inversión *no debe interpretarse como una pregunta*.

Los adverbios que producen dicho cambio estilístico son los siguientes:

- a. *hardly ever*
- b. *never*
- c. *seldom*
- d. *not until*
- e. *neither*
- f. *not only... but also*
- g. *rarely*
- h. *not only...but also*
- i. *by no means*
- j. *under no circumstances*

Observe los siguientes ejemplos y preste atención a la estructura de cada una de las oraciones. A continuación, diga cuál es el equivalente en español de las oraciones.

- a. ***Hardly ever** does a criminal get away with it on account of the advancements in technology.*
- b. ***Never did** he intent to run over the lady.*
- c. ***Seldom is** a person deemed innocent of theft if he steals and uses force on any person and seeks to put any person in fear.*
- d. ***Not until** recently **have** the courts finally resolved how far the defense of duress may be evoked in cases of murder.*
- e. ***Rarely did** the experienced attorney lose a case.*
- f. ***Not only is** robbery an extremely serious offense **but also** it carries a maximum sentence of life imprisonment.*
- g. *It is no defense for a man charged with stealing a TV set to say that he was provoked by jealousy or provoked by the noise it made. **Neither is** it a defense to other charges of assault.*

- h. *The murderer is extremely hazardous. **By no means should** he be approached.*
 i. ***Under no circumstances** was death to have occurred a year and a day after the fatality.*

Richard Bruce. (1994). *Success in Law 4th edition*. London: John Murray Ltd.

Verbos auxiliares que indican tiempo y modalidad en Inglés. Equivalentes en español

To be como verbo auxiliar

El verbo **TO BE** actúa como auxiliar, es decir, se lo utiliza para negar e interrogar en inglés. Puede aparecer como **único verbo lexical** en la FV o bien ser **auxiliar para los tiempos continuos** (presente y pasado). Al mismo tiempo, el verbo TO BE también actúa como **auxiliar en el caso de la voz pasiva**.

Afirmativa	Negativa	Interrogativa
<i>He is a skillful lawyer</i>	<i>He isn't a skillful lawyer</i>	<i>Is he a skillful lawyer?</i>
<i>Judge Baltimore is assessing the evidence</i>	<i>Judge Baltimore is not assessing the evidence.</i>	<i>Is Judge Baltimore assessing the evidence?</i>
<i>They were assessing the evidence</i>	<i>They were not assessing the evidence</i>	<i>Were they assessing the evidence?</i>
<i>The law was enacted in 1988.</i>	<i>The law was not enacted in 1988.</i>	<i>Was the law enacted in 1988?</i>

Verbos auxiliares que indican temporalidad

Los verbos auxiliares *do, does, did, will* no tienen traducción alguna sino que sirven tanto para indicar el tiempo verbal en el que se encuentra la FV como para negar e interrogar. Estos son los siguientes:

Do / Does para el Presente Simple:

- *A solicitor prepares the paperwork before the trial.*
- *Solicitors prepare the paperwork before the trial.*
- *A solicitor **does not** go to court. The barrister does*
- *Solicitors **do not** go to court. Barristers do.*
- ***Does** a barrister go to court?*
- ***Do** barristers go to court?*

Did para el Pretérito:

- *The law had to decide where to draw the line.*
- *The law **did not** have to decide where to draw the line.*
- ***Did** the law have to decide where to draw the line?*

Will para la forma Futura:

- *Trespassers **will** be prosecuted.*
- *Trespassers **will not** be prosecuted.*
- ***Will** trespassers be prosecuted?*

Have / has / had como auxiliares para las formas perfectas

Estos tres auxiliares son utilizados en formas perfectas; *Have* y *Has* en el presente perfecto del inglés y *Had* en el pasado perfecto del inglés. Ambos se traducen como *he / han* y *había(n)* respectivamente.

- *The hearing **has been** put off until next week.*
- *The hearing **has not** been put off.*
- ***Has** the hearing **been** put off?*
- *They **have** already **settled** the dispute.*
- *They **have not** settled the dispute yet.*
- ***Have** they **settled** the dispute yet?*
- *Insanity **had** often **been** used as a defense.*
- *Insanity **had not** been used as a defense in a case like this.*
- ***Had** insanity **been** used as a defense in a case like this before?*

Verbos modales auxiliares

Los verbos modales tienen diferentes significados y son generalmente usados para indicar algo que es incierto o potencial. Al igual que los otros verbos auxiliares, son empleados para formar las formas negativas e interrogativas.

Tiempo presente	Tiempo pasado
<i>Can</i> (poder)	<i>Could</i> (podría – podía)
<i>May</i> (puede que)	<i>Might</i> (podría)
<i>Must</i> (deber)	<i>Had to</i> (tenía que)
<i>Will</i> (forma futura)	<i>Would</i> (forma condicional)
<i>Shall</i> (forma futura)	<i>Should</i> (debería)
	<i>Used to</i> (solía)

La negacion en inglés

La negación en inglés se realiza primordialmente de dos maneras:

- 1) **La negación de la FV** está dada por la introducción de la partícula negativa “**not**” inmediatamente después del verbo “*To Be*” y de auxiliares tales como los verbos auxiliares modales y portadores de tiempo. Esta negación corresponde a la negación que se produce en español al anteponer la partícula negativa “**no**” frente a cualquier verbo.

El testigo **no** está presente *the witness is **not** present.*
No se presentaron los documentos..... *the documents were **not** filed.*
El abogado **no** puede apelar..... *the attorney **cannot** appeal.*
El abogado **no** apelará *the attorney will **not** appeal.*
El abogado **no** apeló *the attorney did **not** appeal.*
El abogado **no** debería apelar..... *the attorney should **not** appeal.*

- 2) **La negación de la FN** está dada por la introducción de la partícula negativa “**no**” antecediendo al núcleo de la misma. En español, sin embargo la negación sigue siendo aplicada a la FV.

- **No** más preguntas, Su Señoría.
*No further **questions**, Your Honor.*
- **No había** ninguna ley que le diera a los conyugues derechos sobre la propiedad de sus pares
*There were **no laws** giving common-law spouses any rights to their spouses' property.*
- Las cargas que ellos enfrentan **no tienen** relación con el grado de sus crímenes.
*The burdens they face bear **no relationship** to the degree of their relative wrongdoing.*

Otras formas de negacion

Existen otras partículas negativas que se utilizan en inglés para producir negación.

¿Cuál es el equivalente en español de las siguientes oraciones?

- **Neither / nor (ni.../ni...)**
*The Jury found **neither** the evidence to be sound **nor** the appropriate testimonies so as not to incriminate Mr. Wilson.*
- **Not at all (en absoluto)**
*The client was **not at all** pleased with his lawyer's handling of the case.*

- **None (ningún(a))**

*Surprisingly, **none** of the victims filed a lawsuit.*

- **Not only ... but also (no solo ... pero también)**

*There is some overlap between tort law and criminal law - some acts **not only** constitute a tort **but also** a crime - and many crimes may be viewed as particularly egregious torts.*

Pronombres relativos

Los pronombres *that, who, whom, whose, when, where, why* y *which* son pronombres relativos. Dichos pronombres se utilizan en lo que se denominan **cláusulas relativas**, éstas son cláusulas subordinadas que proporcionan más información acerca de alguien o algo mencionado en la cláusula principal. Las cláusulas relativas se posicionan directamente después de la FN que se refiere a la persona o cosa de la que se habla.

Dado que las cláusulas relativas son capaces de formar una oración de dos oraciones contiguas, los pronombres relativos tienen **un alto poder referencial** dentro del texto ya que reemplaza uno de las dos FN idénticas y relaciona las dos oraciones.

Observe la FN que se repite en la siguiente idea:



Dos ideas contiguas

*In punching you, the driver commits not only a tort but also **a crime**. **Crime** is an offense under Section 47 of the Offenses Against the Person Act 1861.*

Una idea reducida por un pronombre relativo

*In punching you, the driver commits not only a tort but also **a crime WHICH** is an offense under Section 47 of the Offenses Against the Person Act 1861.*

Observe los significados de estos pronombres relativos. Luego diga a que entidad dichos pronombres hacen referencia:

- **That: que o quien.**

Intentional torts include those actions **that** are intentional and voluntary and **that** are made with knowledge by the person that committed the tort upon the plaintiff (the one **that** brings the complaint seeking relief). Intentional torts include: battery, assault (apprehension of harmful or offensive contact), false imprisonment, intentional infliction of emotional distress, libel, the real property tort of trespass to land, and the personal property torts of conversion and trespass to chattels.

- **Who: quien.**

Similarly, a reckless and irresponsible defendant **who** is fortunate to escape causing major damage to others, is only liable for the minor damages he causes.

- **Whom: (a – de – para - por...) quien.**

This is the person for **whom** a special hearing was granted yesterday.

- **Whose: cuyo(a), de quien.**

That is the man whose case was reopened last month.

- **When: cuando.**

The eggshell-skull principle was also applied **when** Ian and Jean Malcolm were injured in a car accident.

- **Where: donde.**

The judges have had to consider the rules of remoteness of damage in one particular class of tortuous act – **where** the injuries sustained have been severe.

- **Why: por (lo) que.**

Trespass — entering without force on to another’s land without his permission - has always been merely a civil wrong against the occupier of land for which he could claim compensation from the trespasser, and not a crime. This is **why** an uninvited visitor into the Queen’s bedroom in Buckingham Palace could not be prosecuted.

- **Which: cual.**

Tort is a civil wrong for **which** the remedy is a common law action for unliquidated damages and **which** is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.

El “Present Perfect” en inglés y en español

El presente perfecto en inglés está formado por la combinación de **HAVE / HAS + PASADO PARTICIPIO.**

- *Both parties **have** finally **reached** an agreement.*
- Ambas partes finalmente **han llegado** a un acuerdo.
- *Mr. Parker **has sought** further counseling.*
- Mr. Parker **ha buscado** más apoyo legal.

<i>Present perfect (affirmative)</i>	Presente perfecto (afirmativo)
<i>I have sued him</i>	Yo lo he demandado
<i>You have sued him</i>	Tu lo has demandado
<i>He has sued him</i>	El lo ha demandado
<i>She has sued him</i>	Ella lo ha demandado
<i>We have sued him</i>	Nosotros lo hemos demandado
<i>You have sued him</i>	Ustedes lo han demandado
<i>They have sued him</i>	Ellos lo han demandado

<i>Present perfect (negative)</i>	Presente perfecto (negativo)
<i>I have not appealed</i>	Yo no he apelado
<i>You have not appealed</i>	Tu no has apelado
<i>He has not appealed</i>	El no ha apelado
<i>She has not appealed</i>	Ella no ha apelado
<i>We have not appealed</i>	Nosotros no hemos apelado
<i>You have not appealed</i>	Ustedes no han apelado
<i>They have not appealed</i>	Ellos no han apelado

<i>Present perfect (interrogative)</i>	Presente perfecto (interrogativo)
<i>Have I done it well?</i>	¿Lo he hecho bien?
<i>Have you sued him?</i>	¿Lo has demandado?
<i>Has he sued her?</i>	¿La ha demandado?
<i>Has she sued him?</i>	¿Lo ha demandado?
<i>Have we had any answer?</i>	¿ Hemos tenido alguna respuesta?
<i>Have you sued him?</i>	¿Ustedes lo han demandado?
<i>Have they sued him?</i>	¿Lo han demandado?

Este tiempo verbal expresa un acontecimiento reciente o un suceso que, a pesar que tuvo origen en el pasado, tiene vigencia en el presente.

Es importante destacar que existen ciertas palabras que aparecen con frecuencia en conjunción con este tiempo verbal. Estas son las siguientes:

- They have **just** signed the contract.
Acaban de firmar el contrato / **recién** han firmado el contrato.
- They have **already** reached a conclusion.
Ya han llegado a una conclusión.
- That kind of law has not been passed **yet**.
Ese tipo de ley **todavía** no ha sido aprobada.
- Has that kind of law been passed **yet**?
¿**Ya** ha sido aprobada esa clase de ley?

Nótese las siguientes combinaciones con el verbo haber con formas perfectas:

THERE + HAS + BEEN HA HABIDO...

THERE + HAVE + BEEN HAN HABIDO...

Observe las combinaciones del verbo haber con verbos modales en la forma perfecta:

THERE + CAN + HAVE + BEEN PUEDE(N) HABER HABIDO...

THERE + MAY + HAVE + BEEN PUEDE QUE HAYA HABIDO...

THERE + SHOULD + HAVE + BEEN DEBERÍA HABER HABIDO...

THERE + MUST + HAVE + BEEN DEBE HABER HABIDO...

El “*past perfect*” en inglés y español

El pasado perfecto en inglés corresponde al pretérito pluscuamperfecto en el español y se forma combinando las forma pretérita del verbo *have* + un pasado participio.

HAD + PAST PARTICIPLE

Dicho tiempo verbal expresa una idea en donde un acontecimiento pasado tuvo lugar con anterioridad a otro evento pasado.

- The police officer took the offender to the police station after he *had “mirandized”* her.

<i>Past perfect</i>	Pret. pluscuamperfecto
<i>I had sued him</i>	Yo lo había demandado
<i>You had sued him</i>	Tú lo habías demandado
<i>He had sued him</i>	Él lo había demandado
<i>She had sued him</i>	Ella lo había demandado
<i>We had sued him</i>	Nosotros lo habíamos demandado
<i>You had sued him</i>	Ustedes lo habían demandado
<i>They had sued him</i>	Ellos lo habían demandado

La voz pasiva en inglés y en español

La voz pasiva es una forma alternativa de expresión del lenguaje cuyo fin es cambiar el foco de énfasis puesto en los diferentes elementos.

La voz pasiva se forma al combinar **una forma del verbo “to be” (conjugado en cualquier tiempo) + un pasado participio**.

TO BE + PAST PARTICIPLE

La traducción literal de la voz pasiva es aceptable. Sin embargo la forma pasiva con “SE” es más adecuada.

<i>Passive voice</i>	Traducción literal	Interpretación con la partícula “SE”
<i>The petition for divorce is accepted.</i>	La petición de divorcio es aceptada.	Se acepta la petición de divorcio.
<i>His rights are deemed void under the terms of the contract.</i>		
<i>The petition for divorce is being considered.</i>		
<i>The petition for divorce was accepted.</i>		

<i>Her rights were read out to her.</i>		
<i>The petition for divorce will be rejected.</i>		
<i>The contract was being signed.</i>		
<i>The estate is going to be distributed among his issues.</i>		
<i>A new amendment has been introduced.</i>		
<i>New amendments had been introduced.</i>		
<i>The law must be abided by.</i>		
<i>A more lenient kind of punishment may be applied.</i>		
<i>Further evidence ought to be sought.</i>		
<i>Frozen embryos can't be taken out of the hospital.</i>		
<i>This covenant should not be breached.</i>		
<i>His declaration might be taken into account.</i>		

Existe otra forma de voz pasiva que se denomina *impersonal*:

- *It is (said – considered – thought – believed – known) that...*
Se (dice – considera – piensa – cree – sabe) que...

Combinaciones de “to be”+ otras formas verbales (Text 1)

El verbo “to be” en inglés puede estar complementado de la siguiente manera:

To BE + -ING (Present or past continuous forms)

- *The parties were living together.*
- *when parties are not living together but they are separated ...*

To BE + -PAST PARTICIPLE

- *This intention may be implied from the subject.*
- *It may also be expressed by the parties.*
- *It was said in court...*

To BE + -GOING TO

- *It may be safely presumed that they are going to create legal relations.*
- *The jury said they were going to have a final decision by the evening.*

TO BE + INFINITIVE

- The parties are to separate.
- Under this clause the buyers were to pay the price actually prevailing.

TO BE + -PAST PARTICIPLE

- the principle was to be applied.
- the man was to be taken to Court.

**Oraciones condicionales: “if + simple present + will / simple present”
Otras formas de condicionales en inglés.**

IF + PRESENT SIMPLE + WILL / PRESENT SIMPLE

En inglés la palabra “if” corresponde al “si” condicional del español.

Analice las oraciones a continuación y escriba su equivalente en español. Observe las frases verbales de ambas cláusulas.

*If one side **fails** to live up to his/her/its part of the bargain, **there’s** a “breach” and certain remedies for solving the differences are available.*

.....
.....

UNLESS + PRESENT SIMPLE + WILL / PRESENT SIMPLE

“Unless” significa “a menos que” y se usa para introducir una condición. Al igual que “if”, “unless” puede ir al principio o en el medio de la oración.

Expresa las condiciones a continuación en español

- Minors (e.g., usually those under eighteen) **cannot**, generally, **enter** into a binding contract without parental consent, **unless** it **is** for the necessities of life.
- **Unless** it **is** for the necessities of life, minors **cannot enter** into a binding contract...
- The family **will appeal unless** he **is found** innocent.
- **If** he **is found** guilty, the family **will appeal**.
- **If** the other side **is** to be held to the contract, you **must give up** something in exchange.
- You **must give up** something in exchange **unless** the other party **is not to be held** to the contract.

IF + SIMPLE PAST + WOULD + SIMPLE FORM OF VERB

- If a check passed through the Federal Reserve System (as the majority of checks do) Regulation J of the Federal Reserve would come into effect.
- If a creditor had a priority, his debt would be paid when the debtor becomes insolvent before other debts.
- If the mortgage being foreclosed was / were not the only lien on the property, then state law would determine the priority of the property interests. For example, Article 9 of the Uniform Commercial Code governs conflicts between mortgages on real property and liens on fixtures (personal property attached to a piece of real estate).

IF + PAST PERFECT + CONDITIONAL PERFECT

- If a check had passed through the Federal Reserve System (as the majority of checks do), Regulation J of the Federal Reserve would have come into effect.
- If a creditor had had a priority, his debt would have been paid when the debtor becomes insolvent before other debts.
- If the mortgage being foreclosed had not been the only lien on the property, then state law would have determined the priority of the property interests. For example, Article 9 of the Uniform Commercial Code governs conflicts between mortgages on real property and liens on fixtures (personal property attached to a piece of real estate).

Modals + have + past participles – verbos modales + have + participio pasado

Observe las frases verbales a continuación, extraídas del texto, y analízalas. Luego, exprese su significado en español.

- May have become:
- Must have induced:
- Will not have been:

Expresen en español los distintos significados de las siguientes frases verbales

Can	decided
Could	sued
May	drawn
Might + have +	sentenced
Must	contracted
Should	negotiated
Ought to	witnessed

Guías de Estudio
(Teoría)

Guía de Estudio N° 1

Capítulo 1 - Anabel Borja Albi: ¿Qué se entiende por lenguaje jurídico?

Lea atentamente el capítulo y conteste las siguientes preguntas.

1. ¿Qué relación podría establecerse entre Lenguaje Jurídico y Derecho? ¿Qué funciones cumple el tecnolecto en relación al área del conocimiento al que está vinculado?
2. De acuerdo a las funciones antes mencionadas, ¿qué características debe poseer este lenguaje especializado?
3. Con sus propias palabras defina lo que entiende por lenguaje jurídico.
4. Si uno compara al Lenguaje jurídico, con otros lenguajes de especialidad, ¿Qué rasgos comunes o diferencias pueden encontrarse? Fundamente brevemente su respuesta.
5. Esquematice concisamente las tres áreas en que el Lenguaje y Derecho convergen.
6. ¿Está de acuerdo con la afirmación “el lenguaje legal es una forma de poder y como un elemento de exclusión social”?

Guía de Estudio N° 2

Capítulo 2 – Anabel Borja Albi: El Lenguaje jurídico a través de la historia

Lea atentamente el capítulo correspondiente y conteste las siguientes preguntas en detalle.

1. ¿Cuál es la relación entre lenguaje y derecho? ¿De qué manera se produjo la evolución de ambos?
2. ¿Cuáles fueron las primeras manifestaciones de codificación conocidas?
3. ¿Qué tan importante considera fue la codificación de las normas? ¿Por qué?
4. Explique la evolución que se produjo en la antigua Inglaterra. Contraste la palabra oral y la palabra escrita.
5. ¿Qué importancia tuvo el Corpus Iuris Civilis?
6. ¿Qué surgió de la fusión entre los Derechos Romano y Canónico en Inglaterra?
7. Explique la tradición Germánica existente en Inglaterra. ¿Qué documentos avalan su existencia?
8. ¿Qué estrategia uso Carlomagno para poder gobernar a las tribus Germánicas?

Guía de Estudio N° 3

El Derecho y las Leyes (Cap. 1, *El inglés jurídico*. Enrique Alcaraz Varó, Ariel, 2002)

1. Organice los siguientes conceptos semánticamente. Justifique su elección.
Case law – adjective law – binding precedent - common law- precedent – judge-made-law – stare decisis – civil law – tort law – ratio decidendi - Roman law – statute law – Act – substantive law – orbiter dicta – persuasive precedent – canon law – tradition – customs

- a) Mencione las Fuentes creadoras del Derecho Inglés y conceptualice cada una de ellas.
 - b) ¿Cuáles serían las diferencias más marcadas entre nuestro sistema jurídico y su par inglés?
 - c) ¿Qué importancia tuvo la Conquista Normanda en el desarrollo del Derecho Inglés a nivel institucional y lingüístico?
 - d) Mencione las características del Derecho Inglés según los ingleses.
 - e) ¿Qué entiende por Derecho Jurisprudencial? ¿Cuál es el elemento constitutivo del precedente que lo hace vinculante? ¿Qué contiene dicho elemento?
2. Diga si las siguientes afirmaciones son verdaderas o falsas. Si son falsas, corríjalas.
- a) *Orbiter Dicta* , parte del precedente, está ligado al derecho de fondo.
 - b) *Case law* es el reflejo de la labor parlamentaria.
 - c) *Magna Carta* es la constitución Inglesa.
 - d) La Equidad es tan antigua como *Common law*.
 - e) El derecho continental es altamente codificado.

Guía de Estudio N° 4

El lenguaje de la Constitución Norteamericana

Lea atentamente el capítulo “El Lenguaje de la Constitución Norteamericana” y realice las siguientes actividades:

A. A medida que vaya leyendo el capítulo, complete el siguiente mini glosario.

<i>Public law</i>		<i>Secure</i>	
<i>Constitutional law</i>		<i>Unreasonable seizures</i>	
<i>Fundamental law</i>		<i>Issue warrant</i>	
<i>Federal government</i>		<i>Infamous crime</i>	
<i>State government</i>		<i>Indictment by a jury</i>	
<i>Branches of government</i>		<i>Jeopardy of life/limb</i>	
<i>Vested</i>		<i>Compulsory self-incrimination</i>	
<i>State</i>		<i>Due process of law</i>	
<i>State</i>		<i>Just compensation</i>	
<i>State government</i>		<i>Speedy trial</i>	
<i>Definitions of crime</i>		<i>To be confronted</i>	
<i>Sanctions</i>		<i>Compulsory process</i>	
<i>Regulations</i>		<i>Assistance of counsel</i>	
<i>Coin money</i>		<i>Trial by jury</i>	
<i>Foreign policy</i>		<i>Excessive bail or fine</i>	
<i>National currency</i>		<i>Cruel or unusual punishment</i>	

<i>Constitutional clauses</i>		<i>Construction</i>	
<i>Hinder</i>		<i>Slavery</i>	
<i>Law enforcement</i>		<i>Dry law</i>	
<i>Written codification</i>		<i>Duly convicted</i>	
<i>Legal, social and political foundations</i>		<i>The equal protection of laws</i>	
<i>Checks and balances</i>		<i>Enforce</i>	
<i>Ratify</i>		<i>Asylum seeker</i>	
<i>The Bill of Rights</i>		<i>Borders</i>	
<i>Preamble</i>		<i>Ports of entry</i>	
<i>Articles</i>		<i>Revamp</i>	
<i>Sections</i>		<i>Judicial review</i>	
<i>Full faith and credit clause</i>		<i>Congressional provision</i>	
<i>Public acts and records</i>		<i>Sunset clause</i>	
<i>Judicial proceedings</i>		<i>Domestic security</i>	
<i>Entitled to</i>		<i>Surveillance procedures</i>	
<i>Privileges, immunities</i>		<i>Sneak and peek searches</i>	
<i>Amendment procedure</i>		<i>Roving wiretaps</i>	
<i>Enjoy legal superiority</i>		<i>Conflicting provision</i>	
<i>Supremacy clause</i>		<i>By oath or affirmation</i>	
<i>Qualification</i>		<i>Freedom of religion, speech and press</i>	
<i>Abridge freedoms</i>		<i>Redress of grievances</i>	

B. Responda el siguiente cuestionario.

1. Derecho constitucional y ordenamiento político

- a) Defina constitución y derecho constitucional
- b) ¿Cuál es la organización política de los EEUU según lo describe el capítulo?
- c) ¿A qué se refiere el texto cuando plantea una dualidad en el ordenamiento político? ¿Cuáles son las posibles consecuencias?
- d) Realice un diagrama donde muestre la organización de los tres poderes del estado.
- e) ¿Qué tipo de cuestiones son destinadas al Congreso y a las diferentes legislaturas locales?
- f) Enumere los asuntos reservados al estado federal.
- g) ¿Gracias a que se da el buen funcionamiento de poderes compartidos?
- h) ¿Qué es lo que los estados federales no pueden hacer?

2. La Constitución como referencia jurídica suprema

- a) ¿Qué particularidad tiene la Constitución Norteamericana? Realice una comparación con nuestra Ley Suprema.
- b) ¿Qué documento fue el antecesor a la Constitución Americana? ¿Por qué fracaso como documento?
- c) ¿Por qué se dice que la constitución de 1789 es un documento equilibrado?
- d) ¿Qué entiende por la expresión “*Checks and balances*”? ¿Existe en nuestro país?

- e) ¿Por qué es importante la fecha 1791?
- f) ¿Qué objetivos tiene el preámbulo de la ley suprema americana? Compárelo con nuestro preámbulo.
- g) Haga un cuadro sinóptico explicando la organización de la Constitución norteamericana.

3. The Bill of Rights

- a) ¿Qué entiende por “*The Bill of Rights*”? ¿Qué importancia tiene? ¿Existe algo similar en nuestra Constitución?
- b) Esquematice el contenido de la Declaración de Derechos.
- c) ¿Por qué la enmienda II fue sumamente debatida? ¿Qué resonancia tiene con la situación actual del país?

4. Otras enmiendas a la Constitución

- a) Haga un diagrama del resto de las enmiendas.
- b) ¿Por qué fue tan importante la enmienda XIII (1865)?
- c) ¿Qué estipula la “cláusula de protección igual”?
- d) Diga por qué las siguientes fechas fueron importantes de acuerdo al texto: 1920, 1964 y 1919.

5. Los cambios legislativos del 11 de septiembre

- a) Investigue lo ocurrido en NY, EEUU el 11 de septiembre de 2001.
- b) ¿Qué origen el ataque terrorista?
- c) ¿Qué función tenía el INS y que críticas recibió?
- d) ¿Qué medidas se tomaron del punto de vista legislativo?
- e) Explique las características del USAPA.
- f) ¿Cómo se trata la inmigración después de sancionada la USAPA?

Guía de Estudio N° 5

Caso Miranda V. Arizona

A. Trabajo con diccionario. Traduzca o explique con sus propias palabras que entiende por las siguientes frases o palabras:

Arrested – crime victim – police line up – to be charged – rape and kidnapping – self-incrimination – the prosecution – a conviction – the sentences run concurrently – to be informed of one’s rights – in custody – to witness against himself – the assistance of counsel – to be aware of ones rights – criminal justice process – prior to any questioning – the presence of an attorney – retained or appointed - to waive one’s rights.

B. Lea atentamente la descripción del caso *Miranda v. Arizona* del anexo del libro de textos.

C. Responda el siguiente cuestionario.

1. Describa brevemente el contexto del caso. (Lugar, participantes, fechas, otros datos que considere importantes)
2. ¿Considera Ud. que el origen del imputado tuvo algo que ver con el problema suscitado?
3. ¿Cuál fue el error cometido por la policía al momento del interrogatorio?
4. Relea el texto 7 de la sección de Derecho Constitucional y traduzca las enmiendas que fueron violadas en este caso.
5. ¿Qué confeso Miranda por escrito?
6. ¿De qué fue acusado Ernesto Miranda durante el juicio y cuál fue la pena impuesta?
7. ¿En que se basa la apelación presentada por los abogados del inmigrante?
8. ¿Qué resultados tuvo la apelación?
9. ¿Qué opinión le merece la siguiente idea extraída del texto?

“...*The police argued that because Miranda had been convicted of a crime in the past, he must have been aware of his rights...*”

10. En el texto que Ud. leyó, se mencionan otros casos. ¿Qué relevancias tienen en relación a la temática planteada en *Miranda v. Arizona*?
11. ¿Si Ernesto Miranda hubiera sido informado sobre sus derechos, cree Ud. que su situación hubiera sido diferente? ¿Por qué? ¿Por qué no?
12. Traduzca lo siguiente y explique la relevancia de la cita en referencia al caso:

“Individual rights must be balanced against the values of society at large. For instance, the right to free speech must be balanced against our desire for an orderly society. This is why demonstrations, while protected by the First Amendment, can have certain restrictions placed on them. In the Miranda case, what values must be balanced against the right against self-incrimination and the right to counsel?”

13. Traduzca los siguientes párrafos extraídos del texto y exprese su opinión sobre los mismos:

Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody... As for the procedural safeguards to be employed... the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of

the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated, the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned....

The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, we will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given....

The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of forgoing it. . . [T]his warning may serve to make the individual more acutely aware that he is faced with a phase of the adversary system - that he is not in the presence of persons acting solely in his interest....

14. Relea el texto del caso *Miranda v. Arizona* y diga cuál fue el aspecto irónico del caso.

Guía de Estudio N° 6

Cap. III – El Proceso Penal, en Alcaraz Varó

- 1) ¿Para qué tipos de crímenes se utiliza el vocablo “crime”? Defina “crime” and “offence”. Determine la diferencia que existe entre “crime” e “ilícito civil” desde el punto de vista procesal.
- 2) ¿Qué elementos deben tenerse en cuenta para procesar a alguien? Explíquelos brevemente.
- 3) ¿Qué entiende por el término “defence”?
- 4) Establezca la diferencia entre un procedimiento basado en un principio *acusatorio* y un procedimiento basado en un principio *inquisitorio*. ¿Cómo pueden clasificarse los procedimientos de las causas penales?
- 5) ¿Cómo se clasifican las penas? Descríbalas.
- 6) Explique el proceso de detención.
- 7) ¿Qué sucede si el delito que se le imputa a un acusado es grave o muy grave? ¿Qué papel juega en esta instancia el *tribunal con jurado*? ¿Qué diferencia existe entre estas dos expresiones?: *remand on bail* – *remand in prison*.
- 8) Delitos intermedios: ¿qué significa la expresión “*triable either way*”?
- 9) ¿Cuáles pueden ser los delitos leves o menores?
- 10) ¿Cómo se desarrolla un juicio con jurado?
- 11) Describa la composición de un jurado y establezca sus funciones.
- 12) ¿Qué es el Derecho Probatorio? Clasifique las pruebas que pueden ser presentadas en un juicio.

A continuación, responda lo siguiente:

1. Explique cómo y porqué se inicia una demanda.
2. Explique con sus palabras que entiende por “Law of Tort”.
3. Esquematice los 4 “torts” más importantes y las soluciones jurídicas sugeridas por el autor.
4. Establezca las diferencias que existen entre Derecho Adjetivo y Sustantivo. Exprese qué cambios introdujo la *Ley de Enjuiciamiento civil* de 1998.
5. ¿Cuál es la filosofía en la que se basa el nuevo Derecho Civil? Explíquela brevemente.
6. Nombre y caracterice a los 4 pilares en que se apoya el nuevo Código Procesal Civil.
7. Realice una síntesis del apartado 3, “la unificación del procedimiento civil”
8. ¿Qué entiende por vías procedimentales? ¿Cuántas y cuáles son?
9. Manifieste bajo qué criterio se asignan las diferentes vías procedimentales en el Derecho Civil inglés.
10. Con sus palabras, exponga cómo se desarrolla la *vista oral*.
11. ¿Qué características tiene un *proceso contradictorio*?
12. ¿Qué importancia tiene la *exhibición de las pruebas* en la nueva cultura procesal?
13. Explique el desarrollo del *juicio*, el centro de todo proceso contradictorio.
14. Esquematice las sentencias en rebeldía, la ejecución de las sentencias y el recurso de apelación de las sentencias.

Lea y traduzca el cuadro comparativo que cierra el capítulo y vuélquelo en el siguiente cuadro:

Civil	Penal

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